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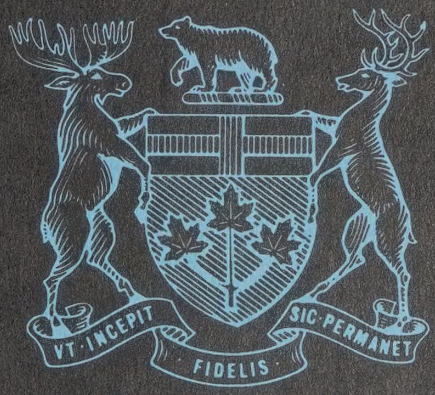
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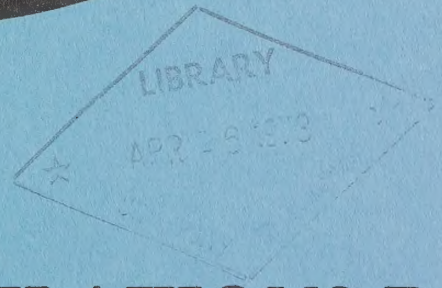
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ONTARIO

*Monthly Report*



ONTARIO LABOUR RELATIONS BOARD





ONTARIO LABOUR RELATIONS BOARD REPORTS

A MONTHLY SERIES OF DECISIONS FROM THE

ONTARIO LABOUR RELATIONS BOARD

CITED [1973] OLRB REP.





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2043-72-R: INTERNATIONAL LEATHER GOODS, PLASTICS & NOVELTY WORKERS' UNION, LOCAL 8 (APPLICANT) V. GIFTSON SALES (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS H. J. F. ADE AND E. BOYER.

DECISION OF THE BOARD:

JANUARY 2, 1973.

1. THE PARTIES HAVE MADE REPRESENTATIONS TO THE BOARD WITH RESPECT TO THE VARIOUS CHALLENGES TO THE LIST OF ELIGIBLE VOTERS. IT NOW APPEARS THAT THE PARTIES HAVE RESOLVED THIS MATTER. THE BOARD THEREFORE NOTES THAT, HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE LIST OF ELIGIBLE VOTERS CONSISTS OF THE PERSONS NUMBER 1 TO 7 INCLUSIVELY ON THE DOCUMENT ENTITLED "VOTERS LIST FOR GIFTSON SALES" WHICH ACCOMPANIED THE LETTER DATED DECEMBER 6, 1972 FROM COUNSEL FOR THE RESPONDENT TO THE BOARD. IN ADDITION, THE BOARD ALSO NOTES, PURSUANT TO PARAGRAPH SIX OF THE DECISION OF THE BOARD DATED NOVEMBER 13, 1972, THAT KOVLA DOMENIKOS IS TO BE PERMITTED TO CAST A SEGREGATED BALLOT IN THE EVENT THAT SHE PRESENTS HERSELF AT THE TIME AND PLACE OF THE REPRESENTATION VOTE AND REQUESTS A BALLOT.

2. COUNSEL FOR THE GROUP OF EMPLOYEES HAS RAISED A NUMBER OF MATTERS FOR CONSIDERATION BY THE BOARD. FIRSTLY, COUNSEL HAS REQUESTED THAT COSTS BE AWARDED IN ITS FAVOUR. IN ALL OF THE CIRCUMSTANCES, THE BOARD WILL NOT AWARD COSTS IN FAVOUR OF COUNSEL FOR THE GROUP OF OBJECTING EMPLOYEES. SECONDLY, COUNSEL HAS CHALLENGED THE CAPACITY OF MR. BRIAN A. DUNN TO ACT ON BEHALF OF THE APPLICANT. COUNSEL HAS NOT ALLEGED ANY FACTS TO SUPPORT HIS CHALLENGE. IN THE VIEW OF THE BOARD, THE QUESTION OF A PERSON ACTING AS COUNSEL FOR A PARTY BEFORE THE BOARD IS ESSENTIALLY A MATTER BETWEEN THAT PARTY AND THE PERSON CONCERNED. THERE IS NOTHING BEFORE THE BOARD TO SUGGEST THAT MR. DUNN LACKS THE CAPACITY TO REPRESENT THE APPLICANT. ACCORDINGLY, THIS CHALLENGE BY COUNSEL FOR THE GROUP OF EMPLOYEES IS DISMISSED.

3. THIRDLY, COUNSEL FOR THE GROUP OF EMPLOYEES HAS REQUESTED THAT THE BOARD PRINT ITS INSTRUCTIONS PERTAINING TO THE REPRESENTATION VOTE IN THIS MATTER IN LANGUAGES OTHER THAN THE ENGLISH LANGUAGE. SPECIFICALLY, ON BEHALF OF THE EMPLOYEES, COUNSEL HAS REQUESTED THAT THE BOARD PRINT ITS INSTRUCTIONS PERTAINING TO THE VOTE IN "ENGLISH, ITALIAN, GREEK, PORTUGUESE AND CZECHOSLOVAC (QUAERE ET SIC) BECAUSE I HAVE REASON TO BELIEVE THAT THE EMPLOYEES IN THE UNIT HAVE GREAT DIFFICULTY IN READING AND UNDERSTANDING THE ENGLISH LANGUAGE".

4. IT APPEARS TO THE BOARD THAT COUNSEL IS REFERRING TO THE FORM 42, NOTICE OF TAKING OF VOTE BY THE ONTARIO LABOUR RELATIONS BOARD - PURPOSE OF VOTE". FORM 42 IS A FORM PRESCRIBED IN THE REGULATIONS MADE UNDER THE LABOUR RELATIONS ACT. THE BOARD DOES NOT HAVE THE POWER ON ITS OWN MOTION TO AMEND THESE REGULATIONS AND THE

INCLUDED PRESCRIBED FORMS. THE BOARD IS THEREFORE NOT PREPARED TO ACCEDE TO THE REQUEST OF COUNSEL FOR THE GROUP OF EMPLOYEES THAT THE INSTRUCTIONS PERTAINING TO THE REPRESENTATION VOTE IN THIS MATTER BE PRINTED IN THE ITALIAN, GREEK, PORTUGUESE, CZECH AND SLOVAK LANGUAGES.

5. THE REGISTRAR IS DIRECTED TO PROCEED WITH THE TAKING OF THE REPRESENTATION VOTE IN THIS MATTER.

2721-72-R: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS, LOCAL 419 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. DISPOSAL SERVICES LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS F. W. MURRAY AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: I. J. THOMSON AND J. BUCHANAN FOR THE APPLICANT; A. J. CLARK, Q.C., AND A. TRAIN FOR THE RESPONDENT.

DECISION OF THE BOARD: JANUARY 2, 1973.

1. THIS IS AN APPLICATION FOR CERTIFICATION IN WHICH THE APPLICANT REQUESTED THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN. FOR THE REASONS SET OUT IN ITS DECISION OF NOVEMBER 20, 1972, THE BOARD DENIED THE APPLICANT'S REQUEST THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN AND DIRECTED THE REGISTRAR TO LIST THIS MATTER FOR HEARING AND TO FIX A NEW TERMINAL DATE FOR THE APPLICATION AND TO EFFECT THE SERVICES PROVIDED FOR IN ACCORDANCE WITH THE PROVISIONS OF SECTION 5 OF THE BOARD'S RULES OF PROCEDURE.

2. FOLLOWING THE BOARD'S DECISION OF NOVEMBER 20, 1972, THE APPLICANT FILED ADDITIONAL MEMBERSHIP CARDS TOGETHER WITH A NEW COPY OF THE DECLARATION CONCERNING MEMBERSHIP DOCUMENTS (FORM 8) COVERING ALL THE MEMBERSHIP EVIDENCE FILED BY THE APPLICANT.

3. AT THE HEARING IN THIS MATTER THE RESPONDENT TOOK THE POSITION THAT THE BOARD SHOULD NOT GIVE EFFECT TO THE ADDITIONAL MEMBERSHIP DOCUMENTS FILED BY THE APPLICANT SINCE THE BOARD'S ACTIONS IN FIXING A NEW TERMINAL DATE ENCHANGED OR IMPROVED THE APPLICANT'S POSITION AND SUCH ACTION WAS CONTRARY TO THE REASONS FOR DECISION SET OUT IN THE CANADIAN GENERAL-TOWER LIMITED CASE, OLRB MONTHLY REPORT, OCTOBER 1968, P. 712.

4. WHILE IT IS TRUE THAT THE APPLICANT IN THIS MATTER TOOK ADVANTAGE OF THE FACT THAT A NEW TERMINAL DATE HAD BEEN FIXED AND PERSISTED WITH ITS CAMPAIGN TO ORGANIZE THE RESPONDENT'S EMPLOYEES AND FILED ADDITIONAL MEMBERSHIP EVIDENCE PRIOR TO THE NEW TERMINAL DATE IN THIS MATTER, SUCH ACTIONS ON THE PART OF THE APPLICANT CANNOT BE CHARACTERIZED AS UNFAIR OR IMPROPER. ONCE A PRE-HEARING REPRESENTATION VOTE IS DENIED AND THE MATTER IS LISTED FOR HEARING, THE RULES REQUIRE THAT A NEW TERMINAL



DATE BE FIXED. IN THE SAME WAY THAT EMPLOYEES MAY OBJECT TO THE APPLICATION PRIOR TO THE NEW TERMINAL DATE, SIMILARLY AN APPLICANT CAN FILE ADDITIONAL MEMBERSHIP EVIDENCE. IT MUST BE REMEMBERED THAT THE APPLICANT DID NOT REQUEST THAT THE PRE-HEARING REPRESENTATION VOTE BE DENIED. SUCH ACTION ON THE PART OF THE BOARD WAS NECESSITATED BY THE OBJECTIONS RAISED BY THE RESPONDENT TO THE LATE FILING OF A REVISED FORM 8. IN ORDER TO GIVE EFFECT TO THE RESPONDENT'S OBJECTIONS, THE BOARD WAS REQUIRED TO DENY THE PRE-HEARING REPRESENTATION VOTE AND LIST THE MATTER FOR HEARING SO THAT THE PARTICULARS CONTAINED IN FORM 8 COULD BE GIVEN TO THE RESPONDENT IN ORDER THAT THE RESPONDENT WOULD HAVE AN OPPORTUNITY TO MAKE REPRESENTATIONS WITH RESPECT THERETO. AT THE HEARING IN THIS MATTER, THE RESPONDENT ACKNOWLEDGED THAT THE BOARD COULD, IN ACCORDANCE WITH ITS USUAL PRACTICE, GIVE EFFECT TO THE REVISED FORM 8 WHICH WAS FILED BY THE APPLICANT. IF, HOWEVER, THE BOARD WERE TO NOW REFUSE TO ENTERTAIN THE ADDITIONAL MEMBERSHIP EVIDENCE FILED BY THE APPLICANT THE BOARD WOULD HAVE TO DO SO ARBITRARILY SINCE THERE IS NOTHING BEFORE THE BOARD WHICH WOULD CAUSE DOUBT TO BE CAST ON THE ADDITIONAL MEMBERSHIP EVIDENCE FILED.

5. IT CANNOT BE SAID THAT THE BOARD'S ACTION IN DENYING THE APPLICANT'S REQUEST THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN, OF ITSELF, ENHANCED THE APPLICANT'S POSITION. THE APPLICANT CANNOT NOW BE CRITICIZED FOR NOT SITTING IDLY BY AND ACCORDINGLY THE ADDITIONAL MEMBERSHIP EVIDENCE FILED BY THE APPLICANT MUST BE GIVEN EFFECT TO IN THE SAME MANNER AS OTHER MEMBERSHIP EVIDENCE WHICH THE APPLICANT HAS FILED.

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9. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

2580-72-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) v. MACDONALDS CONSOLIDATED LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

- AND -

2598-72-R: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS UNION, LOCAL 419, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. MACDONALDS CONSOLIDATED LIMITED (RESPONDENT) v. RETAIL CLERKS INTERNATIONAL ASSOCIATION; RETAIL CLERKS UNION, LOCAL 206, CHARTERED BY THE RETAIL CLERKS INTERNATIONAL ASSOCIATION (INTERVENERS) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS F.W. MURRAY AND P.J. O'KEEFE.

APPEARANCES AT THE HEARING: J.A. RYDER, IAN ROLAND AND HAROLD JURCHUK FOR RETAIL CLERKS INTERNATIONAL ASSOCIATION; I.J. THOMSON FOR WAREHOUSEMEN AND MISCELLANEOUS DRIVERS UNION, LOCAL 419, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND

HELPERS OF AMERICA; PETER T. SPELLISCY FOR MACDONALDS CONSOLIDATED LIMITED; J.A. RYDER, IAN ROLAND AND HAROLD JURCHUK FOR RETAIL CLERKS INTERNATIONAL ASSOCIATION; RETAIL CLERKS UNION, LOCAL 206, CHARTERED BY THE RETAIL CLERKS INTERNATIONAL ASSOCIATION; NO ONE APPEARING FOR THE GROUP OF EMPLOYEES.

DECISION OF THE BOARD:

JANUARY 4, 1973.

1. THESE APPLICATIONS ARE HEREBY CONSOLIDATED.

2. THESE MATTERS ORIGINALLY AROSE AS SEPARATE APPLICATIONS FOR CERTIFICATION FOR THE SAME GROUP OF EMPLOYEES, BY THE WAREHOUSEMEN AND MISCELLANEOUS DRIVERS UNION, LOCAL 419, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (HEREINAFTER REFERRED TO AS "TEAMSTERS") AND BY THE RETAIL CLERKS INTERNATIONAL ASSOCIATION (HEREINAFTER REFERRED TO AS THE "RETAIL CLERKS"). THE MATTERS WERE PLACED ON THE LIST FOR HEARING, ONE FOLLOWING THE OTHER, AND AFTER HEARING THE REPRESENTATIONS FROM COUNSEL AN EXAMINER WAS APPOINTED FOR BOTH APPLICATIONS TO DETERMINE INTER ALIA THE RELATIONSHIP BETWEEN CANADA SAFEWAY LIMITED AND MACDONALDS CONSOLIDATED LIMITED. HAVING REGARD TO THE REPORT OF THE EXAMINER, DATED NOVEMBER 10, 1972, AND TO THE REPRESENTATIONS OF THE PARTIES THE BOARD FINDS THAT MACDONALDS CONSOLIDATED LIMITED IS A WHOLLY OWNED SUBSIDIARY OF CANADA SAFEWAY LIMITED. BOTH COMPANIES HAVE THE SAME OFFICERS AND MACDONALDS CONSOLIDATED LIMITED IS A WHOLESALE SUPPLIER TO CANADA SAFEWAY LIMITED WHICH OPERATES RETAIL STORES. THE EMPLOYEES OF MACDONALDS CONSOLIDATED LIMITED ARE PAID BY COMPUTERIZED CHEQUES ISSUED BY CANADA SAFEWAY LIMITED WHO THEN CHARGES MACDONALDS CONSOLIDATED LIMITED FOR THE PAYROLL EXPENDITURE. IN ADDITION, CANADA SAFEWAY LIMITED RENTS OFFICE SPACE IN METROPOLITAN TORONTO FROM MACDONALDS CONSOLIDATED LIMITED. THE SENIOR MANAGEMENT PERSONNEL INCLUDING THE PERSONNEL OFFICER ARE COMMON FOR BOTH COMPANIES.

3. THE ORIGINAL ADVERTISEMENT FOR EMPLOYEES WAS MADE IN THE NAME OF CANADA SAFEWAY LIMITED BECAUSE IT WAS A WELL KNOWN COMPANY AND THE INFERENCE IS THAT PERSONS WOULD BE MORE LIKELY TO APPLY TO CANADA SAFEWAY LIMITED FOR EMPLOYMENT THAN TO THE LESS KNOWN MACDONALDS CONSOLIDATED LIMITED. THE EMPLOYEES APPLIED ON PERSONNEL FORMS OF CANADA SAFEWAY LIMITED.

4. AT THE HEARING THE BOARD WAS ADVISED THAT THE RELATIONSHIP BETWEEN MACDONALDS CONSOLIDATED LIMITED AND CANADA SAFEWAY LIMITED IS COMMON TO OPERATIONS OF THE COMPANY AT OTHER LOCATIONS AND THAT IN THOSE SITUATIONS THERE ARE SEPARATE BARGAINING UNITS FOR THE CANADA SAFEWAY LIMITED STORES AND THE MACDONALDS CONSOLIDATED LIMITED WAREHOUSE OPERATIONS.

5. HAVING REGARD TO THE EVIDENCE AND TO THE REPRESENTATIONS OF THE PARTIES THE BOARD DETERMINES THAT THIS IS AN APPROPRIATE SITUATION FOR SECTION 1(4) OF THE LABOUR RELATIONS ACT TO BE APPLIED. THAT SECTION PROVIDES:

1.-(4) WHERE, IN THE OPINION OF THE BOARD, ASSOCIATED OR RELATED ACTIVITIES OR BUSINESSES ARE CARRIED ON BY OR THROUGH MORE THAN ONE CORPORATION, INDIVIDUAL, FIRM, SYNDICATE OR ASSOCIATION, OR ANY COMBINATION THEREOF, UNDER COMMON CONTROL OR DIRECTION, THE BOARD MAY TREAT THE CORPORATIONS, INDIVIDUALS, FIRMS, SYNDICATES OR ASSOCIATIONS OR ANY COMBINATION THEREOF AS CONSTITUTING ONE EMPLOYER FOR THE PURPOSES OF THIS ACT.

BOTH COMPANIES ARE ASSOCIATED AND HAVE RELATED ACTIVITIES OR BUSINESSES WHICH ARE CARRIED ON THROUGH MORE THAN ONE CORPORATION UNDER COMMON CONTROL OR DIRECTION. WE THEREFORE DETERMINE THAT BOTH CORPORATIONS ARE ONE EMPLOYER FOR THE PURPOSES OF THE LABOUR RELATIONS ACT.

6. WE HAVE ELSEWHERE INDICATED THAT IN A SITUATION WHERE THERE ARE RELATED OR ASSOCIATED COMPANIES THAT WHERE THE PARTIES LEAVE BARGAINING RIGHTS EXPOSED THEY DO SO "AT THEIR PERIL AND AT THE RISK THAT ANOTHER TRADE UNION MAY ENTER THE SITUATION AND CLAIM THOSE EXPOSED BARGAINING RIGHTS". INDUSTRIAL-MINE INSTALLATIONS LIMITED, OCTOBER 1972, BOARD FILE NO. 2229-72-R.

7. THE RETAIL CLERKS PRESENTLY HOLD BARGAINING RIGHTS PURSUANT TO A COLLECTIVE AGREEMENT WITH CANADA SAFEWAY LIMITED STORES FOR "ALL EMPLOYEES EMPLOYED BY CANADA SAFEWAY LIMITED IN OR IN CONNECTION WITH ITS STORES LOCATED IN PEEL COUNTY AND YORK COUNTY" WITH CERTAIN EXCEPTIONS THAT ARE NOT HERE MATERIAL. THAT COLLECTIVE AGREEMENT EXPIRED IN JULY OF 1972. WE ARE ADVISED THAT NEGOTIATIONS HAVE BEEN COMPLETED, BUT THAT AN AGREEMENT HAS NOT BEEN SIGNED.

8. IN SEPTEMBER OF 1972, MACDONALDS CONSOLIDATED LIMITED COMMENCED OPERATIONS IN THE MUNICIPALITY OF METROPOLITAN TORONTO. IT WAS AT THAT TIME THAT BOTH THE TEAMSTERS AND THE RETAIL CLERKS COMMENCED THEIR ORGANIZATIONAL ACTIVITY AMONG THE EMPLOYEES WHICH RESULTED IN EACH UNION FILING AN APPLICATION FOR CERTIFICATION.

9. COUNSEL FOR THE RETAIL CLERKS HAS INVITED US TO FIND THAT THE SCOPE OF THE BARGAINING UNIT CONTAINED IN THE COLLECTIVE AGREEMENT BETWEEN THE RETAIL CLERKS AND CANADA SAFEWAY LIMITED EXTENDS TO THE EMPLOYEES IN THE WAREHOUSE OPERATIONS AT MACDONALDS CONSOLIDATED LIMITED, AND THAT THE RETAIL CLERKS HOLD BARGAINING RIGHTS FOR THE EMPLOYEES AT THE WAREHOUSE. WE DECLINE TO DO SO; THE COLLECTIVE AGREEMENT SPECIFICALLY INDICATES THAT IT COVERS EMPLOYEES IN OR "IN CONNECTION WITH ITS STORES". IN THE CIRCUMSTANCES AND GIVEN THE RELATION BETWEEN THE STORE OPERATION AND THE WAREHOUSE OPERATION WE DO NOT THINK THAT THE PHRASE "IN CONNECTION WITH ITS STORES" IS SUFFICIENT TO ENCOMPASS THE EMPLOYEES WHO WORK IN THE WAREHOUSE OPERATIONS. THERE IS NO INTERCHANGE OF EMPLOYEES BETWEEN THE STORES AND THE WAREHOUSE AND THE EMPLOYEES AT THE WAREHOUSE HAVE NO RELATIONSHIP TO THE STORES OTHER THAN THAT THEY SHIP GOODS TO



THE RETAIL STORES. IN THE RESULT WE DETERMINE THAT THE RETAIL CLERKS DO NOT HOLD BARGAINING RIGHTS FOR THE EMPLOYEES WHO ARE THE SUBJECT OF THIS CONSOLIDATED APPLICATION.

10. IN THE CIRCUMSTANCES OF THIS CASE AND AFTER CONSIDERING THE REPORT OF THE EXAMINER AND THE REPRESENTATIONS MADE TO US AT THE HEARING, AND AFTER CONSIDERING THE PREVIOUS BARGAINING HISTORY OF BOTH CANADA SAFEWAY LIMITED AND MACDONALDS CONSOLIDATED LIMITED WE FIND THE BARGAINING UNIT OF WAREHOUSE EMPLOYEES TO BE THE APPROPRIATE BARGAINING UNIT AND THAT UNIT IS DESCRIBED AS FOLLOWS: ALL EMPLOYEES OF CANADA SAFEWAY LIMITED IN ITS MACDONALDS CONSOLIDATED LIMITED WAREHOUSE OPERATION AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

11. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN THIRTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE RETAIL CLERKS INTERNATIONAL ASSOCIATION ON SEPTEMBER 28, 1972, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

12. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN SIXTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE WAREHOUSEMEN AND MISCELLANEOUS DRIVERS UNION, LOCAL 419, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA ON OCTOBER 4, 1972, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

13. IN THE CIRCUMSTANCES OF THIS CASE AND IN ACCORDANCE WITH THE BOARD'S USUAL PRACTICE THE BOARD ORDERS THAT A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

14. VOTERS WILL BE GIVEN A CHOICE BETWEEN THE RETAIL CLERKS INTERNATIONAL ASSOCIATION AND THE WAREHOUSEMEN AND MISCELLANEOUS DRIVERS UNION, LOCAL 419, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA.

15. THE MATTER IS REFERRED TO THE REGISTRAR.

1296-71-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL 786 (APPLICANT) V. SENTINEL RELIANCE PRODUCTS LIMITED (RESPONDENT) V. ONTARIO ERECTORS ASSOCIATION (PARTY ADDED BY THE BOARD) V. INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS (PARTY ADDED BY THE BOARD).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: AUBREY E. GOLDEN AND JAMES TYE FOR THE APPLICANT; R. A. FARRENT FOR THE RESPONDENT; ROBIN B. CUMINE AND S. C. ECCLES FOR THE ONTARIO ERECTORS ASSOCIATION; JEFFREY SACK, NORMAN WILSON AND B. A. DUNN FOR THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS.

DECISION OF THE BOARD: JANUARY 5, 1973.

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2. THE BOARD FURTHER FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 108 OF THE LABOUR RELATIONS ACT.

3. THE APPLICANT IS SEEKING CERTIFICATION FOR A BARGAINING UNIT OF EMPLOYEES DESCRIBED AS ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY MILE RADIUS OF THE NORTH BAY POST OFFICE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN.

4. THE RESPONDENT, THE ONTARIO ERECTORS ASSOCIATION (HEREINAFTER REFERRED TO AS THE "ASSOCIATION") AND THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS (HEREINAFTER REFERRED TO AS THE "INTERNATIONAL") ADOPTED THE POSITION THAT THE APPLICATION WAS UNTIMELY BY REASON OF THE EXISTENCE OF A COLLECTIVE AGREEMENT BETWEEN THE ASSOCIATION AND THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNIONS 700, 721, 736, 765 AND 786. THE ALLEGED COLLECTIVE AGREEMENT BECAME EFFECTIVE ON MAY 1, 1971 AND REMAINS IN EFFECT UNTIL APRIL 30, 1973, AND FROM YEAR TO YEAR SUBJECT TO NOTICE. THIS APPLICATION FOR CERTIFICATION WAS FILED ON NOVEMBER 25, 1971.

5. THE APPLICANT ADOPTED THE POSITION THAT THE PRESENT APPLICATION FOR CERTIFICATION WAS TIMELY BECAUSE THE ALLEGED COLLECTIVE AGREEMENT REFERRED TO IN PARAGRAPH FOUR HEREIN WAS NOT BINDING ON THE APPLICANT.

6. IT WAS THE POSITION OF THE RESPONDENT, THE ASSOCIATION AND THE INTERNATIONAL THAT THIS APPLICATION FOR CERTIFICATION WAS UNTIMELY BY REASON OF THE EXISTENCE OF THE COLLECTIVE AGREEMENT REFERRED TO IN PARAGRAPH FOUR HEREIN. THE RESPONDENT AND THE ASSOCIATION ARGUED THAT

EITHER NORMAN WILSON HAD THE AUTHORITY UNDER THE CONSTITUTION OF THE INTERNATIONAL TO EXECUTE THE COLLECTIVE AGREEMENT ON BEHALF OF THE APPLICANT AND DID IN FACT EXECUTE THE COLLECTIVE AGREEMENT, AND/OR, THAT THE APPLICANT HAD RATIFIED THE COLLECTIVE AGREEMENT BY ITS SUBSEQUENT CONDUCT. THE INTERNATIONAL HELD THE SAME POSITION AS THE RESPONDENT AND THE ASSOCIATION AND IN ADDITION ARGUED, IN THE ALTERNATIVE, THAT IN ANY EVENT THE RESPONDENT HAD CONTRIBUTED FINANCIAL OR OTHER SUPPORT TO THE APPLICANT CONTRARY TO SECTION 12 OF THE LABOUR RELATIONS ACT. ACCORDINGLY, THE INTERNATIONAL REASONED THAT THE BOARD WAS PROHIBITED FROM CERTIFYING THE APPLICANT.

7. SAUL HALPERIN, WILLIAM JEMISON, W. G. HARRISON AND ROY FARRANT WERE CALLED AS WITNESSES BY THE ASSOCIATION. NORMAN WILSON WAS CALLED AS A WITNESS BY THE INTERNATIONAL.

8. SAUL HALPERIN INFORMED THE BOARD THAT HE WAS EMPLOYED BY NIAGARA STRUCTURAL STEEL, A COMPANY ENGAGED IN THE FABRICATION AND ERECTION OF STRUCTURAL STEEL, AND THAT HE WAS IN HIS FIFTH YEAR AS CHAIRMAN OF THE ASSOCIATION. HE TESTIFIED THAT THE ASSOCIATION HAD BEEN ENGAGED IN NEGOTIATIONS WITH LOCALS 700, 721, 736, 765 AND 786 OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS WHICH WHEN THEY ENDED ON AUGUST 31, 1971 HAD BEEN GOING ON FOR SOME FIVE MONTHS. AGREEMENT ON THE TERMS OF A NEW COLLECTIVE AGREEMENT WAS REACHED AT THE END OF AUGUST 1971 WITH THESE FIVE LOCALS INCLUDING THE APPLICANT. MR. HALPERIN GAVE EVIDENCE THAT DURING THE SIGNING OF THE COLLECTIVE AGREEMENT, MR. NORMAN WILSON READ AND SHOWED A DOCUMENT TO THE OTHER TRADE UNION REPRESENTATIVES, TO THE WITNESS, TO MR. ECCLES (THE VICE-CHAIRMAN OF THE ASSOCIATION) AND TO ALL THOSE PRESENT WHICH SHOWED WILSON'S AUTHORITY TO SIGN ON BEHALF OF THE APPLICANT. THIS DOCUMENT WHICH WAS DATED AUGUST 31, 1971 READS AS FOLLOWS:

"TO NORMAN A. WILSON

THE GENERAL EXECUTIVE BOARD HAS CAREFULLY REVIEWED ALL INFORMATION IN ITS POSSESSION CONCERNING THE CURRENT STRIKE BETWEEN ONTARIO ERECTORS ASSOCIATION AND FIVE LOCAL UNIONS OF THIS INTERNATIONAL ASSOCIATION, SPECIFICALLY LOCALS NUMBER 700 - 721 - 736 - 765 AND 786. THIS REVIEW ESTABLISHED THAT ALL LOCAL UNIONS APPROVED THE PROPOSED AGREEMENT SUBMITTED BY YOUR LETTER OF AUGUST 24, 1971 WITH THE EXCEPTION OF LOCAL 786. THE GENERAL EXECUTIVE BOARD CAREFULLY CONSIDERED THE PRESENT SITUATION, THE FACTS CONCERNING REFUSAL OF LOCAL 786 TO RATIFY THE AGREEMENT, THE NUMBER OF MEMBERS VOTING ON THIS MULTI LOCAL AGREEMENT, AND OTHER FACTORS PRESENTLY EXISTING, FOLLOWING WHICH THE GENERAL EXECUTIVE BOARD, IN,



ACCORDANCE WITH THE AUTHORITY CONTAINED IN ARTICLE 9, SECTION 14 OF THE INTERNATIONAL CONSTITUTION, UNANIMOUSLY APPROVED THE RECOMMENDATION OF GENERAL PRESIDENT JOHN H. LYONS TO END THIS STRIKE BY AUTHORIZING NORMAN A. WILSON, EXECUTIVE DIRECTOR OF CANADIAN OPERATIONS TO SIGN THE AGREEMENT FOR AND IN BEHALF OF LOCAL 786 AND YOU ARE HEREBY AUTHORIZED AND INSTRUCTED TO CARRY OUT THE DECISION OF THE GENERAL EXECUTIVE BOARD. YOU WOULD FURTHER ADVISE ALL LOCAL UNIONS INVOLVED OF THIS ACTION AS WELL AS THE ONTARIO ERECTORS ASSOCIATION, AND ADVISE ALL CONCERNED THAT THE STRIKE, IN ACCORDANCE WITH THIS ACTION, IS TERMINATED AND ALL JOBS SHOULD PROCEED IN ACCORDANCE WITH THE TERMS OF THAT AGREEMENT. SEPARATE LETTERS CONCERNING THE ABOVE WILL BE FORWARDED TO EACH LOCAL UNION.

(SIGNED) GENERAL EXECUTIVE BOARD,  
JUEL D. DRAKE, GENERAL SECRETARY."

9. MR. HALPERIN GAVE EVIDENCE THAT HE RELIED ON THIS DOCUMENT WHEN ENTERING INTO THE COLLECTIVE AGREEMENT ON BEHALF OF THE ASSOCIATION. THE STRIKE ENDED UPON THE SIGNING OF THE COLLECTIVE AGREEMENT AND ALL FIVE LOCALS WENT BACK TO WORK FOLLOWING THE EXECUTION OF THE COLLECTIVE AGREEMENT. ON NOVEMBER 30, 1971, MR. S. C. ECCLES SENT OUT A LETTER TO THE APPLICANT ON THE SUBJECT OF CHECK OFF. THIS LETTER STATED THAT DURING NEGOTIATIONS IT WAS INDICATED TO THE ASSOCIATION THAT THE LOCALS WOULD OBTAIN SPECIAL MEMBERSHIP AUTHORIZATION FOR THE 8¢ PER HOUR CHECK OFF AS STIPULATED IN THE COLLECTIVE AGREEMENT. THE LETTER ADDED THAT UPON RECEIPT OF THE AUTHORIZATION, THE ASSOCIATION WOULD ADVISE ITS MEMBERS TO START CHECK OFF PROCEDURES ON JANUARY 1, 1972. IN REPLY, THE ASSOCIATION RECEIVED A LETTER FROM THE APPLICANT DATED DECEMBER 3, 1971 WHICH STATED THAT MEMBERS OF LOCAL 786 HAD AUTHORIZED THE 8¢ PER HOUR CHECK OFF FOR ALL EMPLOYEES WORKING WITHIN THE JURISDICTION OF LOCAL 786 IN SUDBURY, EFFECTIVE JANUARY 1, 1972. THIS LETTER WAS SIGNED BY MR. JAMES TYE IN HIS CAPACITY AS BUSINESS MANAGER OF THE APPLICANT. SIMILAR LETTERS WERE EXCHANGED BETWEEN THE ASSOCIATION AND THE OTHER LOCALS, NAMELY 700, 721, 736 AND 765.

10. THEREUPON MR. ECCLES, IN A LETTER DATED DECEMBER 21, 1971, ADVISED THE MEMBERS OF THE ASSOCIATION THAT LETTERS HAVE BEEN RECEIVED FROM THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL UNION NOS. 700, 721, 736, 765 AND 786, AUTHORIZING CHECK OFF AS PER TERMS OF ARTICLE 32 OF THE COLLECTIVE AGREEMENT. THIS LETTER INSTRUCTED THE MEMBERS OF THE ASSOCIATION TO PROCEED EFFECTIVE JANUARY 1, 1972 WITH CHECK OFF PROCEDURES AS PER ARTICLE 32.

11. AFTER JANUARY 1972, MEMBERS OF THE ASSOCIATION WORKED IN THE SUDBURY AREA. THERE WAS NO CHECK OFF PRIOR TO THE SIGNING OF THE COLLECTIVE AGREEMENT. MR. HALPERIN GAVE EVIDENCE THAT THERE HAD BEEN NO OFFICIAL NOTIFICATION THAT LOCAL 786 WAS DISPUTING THE COLLECTIVE AGREEMENT ALTHOUGH HE STATED THAT HE HAD HEARD RUMOURS THAT THE APPLICANT WAS DISPUTING THE COLLECTIVE AGREEMENT.

12. UNDER CROSS-EXAMINATION MR. HALPERIN AGREED THAT THE ASSOCIATION WAS AWARE OF AN APPLICATION FOR CERTIFICATION MADE BY THE APPLICANT WITH RESPECT TO NORRIS IRON WORKS LIMITED. THE WITNESS ALSO CONCEDED THAT HE WAS AWARE OF RUMOURS OF A DISPUTE REGARDING THE COLLECTIVE AGREEMENT PRIOR TO THE CIRCULATION OF THE LETTERS CONCERNING CHECK OFF. THE WITNESS AGREED THAT HE ATTENDED THE MEETING WHICH LED UP TO THE SIGNING OF THE COLLECTIVE AGREEMENT AND THAT MR. WILSON, AS A REPRESENTATIVE OF THE INTERNATIONAL, HAD SAT IN ON SOME OF THE EARLIER BARGAINING SESSIONS. THE WITNESS WAS AWARE THAT THE APPLICANT HAD A PARTICULAR POSITION REGARDING SOME TERMS OF THE PROPOSED COLLECTIVE AGREEMENT AND THAT SUCH POSITION SET IT APART FROM THE OTHER FOUR LOCALS. IN PARTICULAR, HE WAS AWARE THAT MR. TYE OBJECTED TO THE 40 PER CENT CLAUSE IN ARTICLE 2.4 AND THAT THE LATTER DID NOT CHANGE HIS POSITION ON THIS. MR. TYE WAS PRESENT AT MEETING ON THE MORNING OF AUGUST 31, 1971, AND LEFT AT ABOUT THREE O'CLOCK IN THE AFTERNOON PRIOR TO THE SIGNING OF THE COLLECTIVE AGREEMENT. NEITHER THE APPLICANT NOR THE ASSOCIATION HAD CHANGED ITS POSITION ON ARTICLE 2.4. AT SOME POINT, MR. TYE LEFT AND MR. WILSON WAS PRESENT. THE ASSOCIATION WANTED TO KNOW WHO WOULD SIGN FOR THE APPLICANT. AT THIS POINT, THE COMMUNICATION REFERRED TO IN PARAGRAPH EIGHT ARRIVED. THE WITNESS STATED THAT HE WAS AWARE THAT MR. WILSON WAS NOT A REPRESENTATIVE OF LOCAL 786 AND THAT LOCAL 786 DID NOT AGREE TO ALL OF THE TERMS IN THE COLLECTIVE AGREEMENT. THE WITNESS INFORMED THE BOARD THAT HE HAD SEEN THE CONSTITUTION OF THE INTERNATIONAL PRIOR TO THE SIGNING OF THE COLLECTIVE AGREEMENT. HE DISCUSSED THE MATTER WITH MR. WILSON AND GATHERED FROM THE CONSTITUTION THAT MR. WILSON HAD THE AUTHORITY TO SIGN ON BEHALF OF THE APPLICANT. THE WITNESS STATED THAT HE DID NOT KNOW WHEN THE RESPONDENT JOINED THE ASSOCIATION BUT STATED THERE WAS NO DISPUTE REGARDING BARGAINING RIGHTS. THE WITNESS WAS AWARE THAT THE APPLICATION RESPECTING NORRIS IRON WORKS LIMITED HAD BEEN DISMISSED BY THE BOARD.

13. MR. WILLIAM JEMISON WAS CALLED AS A WITNESS BY THE ASSOCIATION. HE INFORMED THE BOARD THAT HE WAS EMPLOYED BY DOMINION BRIDGE WHICH IS ENGAGED IN THE FABRICATION AND ERECTION OF STEEL AND IS A MEMBER OF THE ASSOCIATION WHICH BARGAINS FOR DOMINION BRIDGE. HE TESTIFIED THAT DOMINION BRIDGE WORKED IN THE JURISDICTION OF THE APPLICANT AND THAT DOMINION BRIDGE WAS BOUND BY THE COLLECTIVE AGREEMENT BETWEEN THE ASSOCIATION AND FIVE LOCALS OF THE INTERNATIONAL. HE GAVE EVIDENCE THAT SUBSEQUENT TO THE EXECUTION OF THIS COLLECTIVE AGREEMENT, DOMINION BRIDGE OPERATED IN SUDBURY WHICH IS WITHIN THE TERRITORIAL JURISDICTION OF THE APPLICANT. MR. JEMISON TESTIFIED THAT THE APPLICANT HAS SUPPLIED MEN TO DOMINION BRIDGE UNDER THE TERMS OF THE COLLECTIVE AGREEMENT AND THAT THE MEN HAD BEEN GIVEN REFERRAL SLIPS FROM THE APPLICANT IN THE TIMMINS

AND SAULT STE. MARIE AREAS. THESE REFERRAL SLIPS WERE SIGNED ON BEHALF OF THE APPLICANT AND THE MEN WERE REQUIRED TO HAVE THESE REFERRAL SLIPS WHEN THEY REPORTED TO WORK FOR DOMINION BRIDGE.

14. THE WITNESS STATED THAT DOMINION BRIDGE COMMENCED CHECK OFF PURSUANT TO SECTION 32.1 OF THE COLLECTIVE AGREEMENT AND THAT THE PREVIOUS COLLECTIVE AGREEMENT WHICH BOUND DOMINION BRIDGE DID NOT CONTAIN THIS TYPE OF CHECK OFF CLAUSE. THE CHECK OFF REGARDING MEMBERS OF THE APPLICANT WERE SENT TO THE APPLICANT. DOMINION BRIDGE SENT IN A CHEQUE, DATED FEBRUARY 14, 1972, TO THE APPLICANT WHICH REPRESENTED A SUM OF \$1,163.68 ON ACCOUNT OF DUES CHECK OFF. THIS CHEQUE WAS CASHED BY THE APPLICANT. MR. JEMISON ALSO GAVE EVIDENCE THAT CERTAIN WELFARE PAYMENTS WERE MADE BY REASON OF THE EXISTENCE OF THE COLLECTIVE AGREEMENT AND THAT DOMINION BRIDGE HAD RECEIVED NO OFFICIAL NOTIFICATION THAT THE APPLICANT DID NOT RELY ON THE COLLECTIVE AGREEMENT. IN FACT, THE APPLICANT SUPPLIED MEN TO DOMINION BRIDGE AND WHICH DEDUCTED DUES CHECK OFF AND WELFARE AND REMITTED SAME TO THE APPLICANT.

15. UNDER CROSS-EXAMINATION, THE WITNESS STATED THAT SINCE THE LAWFUL STRIKE IN 1971 SOME COMPANIES HAD BEEN STRUCK AND OTHERS HAD NOT BEEN. THE WITNESS ALSO AGREED THAT IT WAS POSSIBLE THAT DOMINION BRIDGE WAS WORKING WHEN OTHER EMPLOYERS WERE NOT. THE WITNESS ALSO STATED THAT HE WAS NOW AWARE OF THE PROBLEM THAT THE APPLICANT WAS NOT ACCEPTING THE COLLECTIVE AGREEMENT. HOWEVER, THE WITNESSED STATED DOMINION BRIDGE REGARDED THE COLLECTIVE AGREEMENT AS VALID.

16. MR. WILLIAM HARRISON WAS CALLED AS A WITNESS BY THE ASSOCIATION. HE INFORMED THE BOARD THAT HE WAS EMPLOYED BY FRANKEL STRUCTURAL STEEL, WHICH IS ENGAGED IN THE FABRICATION AND ERECTION OF STRUCTURAL STEEL, AND IS A MEMBER OF THE ASSOCIATION. HE FURTHER INFORMED THE BOARD THAT FRANKEL STRUCTURAL STEEL IS BOUND BY THE COLLECTIVE AGREEMENT. THE WITNESS TESTIFIED THAT HE IS A TRUSTEE OF THE WELFARE PLAN AND THE PENSION PLAN COVERING THE IRON WORKERS AND WHICH HAVE BEEN IN EXISTENCE SINCE 1962. HE INFORMED THE BOARD THAT ARTICLE 10 IN THE PREVIOUS COLLECTIVE AGREEMENT COVERED THE WELFARE PLAN AND THE PENSION PLAN PROVISIONS. THE WITNESS GAVE EVIDENCE THAT CONTRIBUTIONS TO THESE PLANS WERE MADE SUBSEQUENT TO THE SIGNING OF THE CURRENT COLLECTIVE AGREEMENT. THE WITNESS INFORMED THE BOARD THAT THE APPLICANT IS INCLUDED IN SUCH PROVISIONS AND THAT MEMBERS OF THE APPLICANT HAVE MADE CLAIMS ON THESE PLANS. THE TRUSTEES WERE NEVER NOTIFIED THAT THE COLLECTIVE AGREEMENT WAS NOT IN FORCE.

17. MR. HARRISON TESTIFIED THAT THE APPLICANT HAS A TRUSTEES MR. JAMES TYE, THE BUSINESS AGENT OF THE APPLICANT, SITTING ON THE BOARD OF TRUSTEES. THE WITNESS ALSO STATED THAT AT THE TIME OF THE HEARING OF THIS APPLICATION MR. TYE WAS STILL A TRUSTEE AND THAT ANYONE WHO EMPLOYS IRON WORKERS IS REQUIRED TO PAY INTO THE PLANS TO THE ADMINISTRATOR. MR. HARRISON GAVE EVIDENCE THAT UNDER THE PRESENT COLLECTIVE AGREEMENT, THE AMOUNTS TO BE PAID INTO THE PLANS WERE INCREASED. SUCH PAYMENTS INTO THE PLANS UNDER THE PRESENT COLLECTIVE AGREEMENT REFLECTED CONTRIBUTIONS FOR THE MEMBERS OF THE APPLICANT.



18. UNDER CROSS-EXAMINATION, MR. HARRISON STATED THAT PAYMENT INTO THE PLANS REQUIRES NO ACTION BY EMPLOYEES. HE AGREED THAT SUCH EMPLOYEES JUST HAVE TO GO TO WORK AND THAT THE PAYMENTS ARE MADE AUTOMATICALLY AND COULD POSSIBLY BE MADE WITHOUT A COLLECTIVE AGREEMENT, SINCE RIGHTS TO BENEFITS ARE SET OUT IN A TRUST AGREEMENT WHICH CONTINUES APART FROM A COLLECTIVE AGREEMENT. THE WITNESS HAD NO KNOWLEDGE OF WHETHER MR. TYE ATTENDED ANY MEETINGS OF THE TRUSTEES AFTER AUGUST 31, 1971. THE WITNESS WAS AWARE OF MR. TYE'S FEELINGS FROM PERSONAL COMMENTS MADE DURING THE NEGOTIATIONS BY MR. TYE AND THAT MR. TYE OBJECTED TO CERTAIN PORTIONS OF THE PROPOSED COLLECTIVE AGREEMENT. MR. HARRISON AGREED THAT THERE WERE EMPLOYEES IN THE SUDBURY AREA SUBSEQUENT TO AUGUST 31, 1971, AND THAT REMITTANCES WERE NOT MADE TO THE APPLICANT BECAUSE NO FORMS WERE SUPPLIED BY THE APPLICANT. THE WITNESS WAS TOLD THAT SUCH FORMS WERE AT THE PRINTERS. HOWEVER, MR. HARRISON GAVE EVIDENCE THAT REMITTANCES ARE NOW BEING MAILED TO THE APPLICANT. IN RE-EXAMINATION, MR. HARRISON INFORMED THE BOARD THAT HE HAD NOT BEEN TOLD BY MR. TYE THAT MEN WORKING SUBSEQUENT TO AUGUST 31, 1971, WERE NOT TO BE "BANKED" FOR THE HOURS WORKED.

19. MR. ROY FARRANT, THE PRESIDENT OF THE RESPONDENT WAS CALLED AS A WITNESS BY THE ASSOCIATION AND TESTIFIED THAT THE LATTER HAS BARGAINING RIGHTS FOR THE RESPONDENT AND THAT SUCH RIGHTS WERE OBTAINED IN FEBRUARY 1971. HE GAVE EVIDENCE THAT THE RESPONDENT IS BOUND BY THE COLLECTIVE AGREEMENT AND THAT IT HAS BEEN OPERATING UNDER THE DIRECTIONS CONTAINED IN A LETTER FROM MR. TYE, THE BUSINESS MANAGER OF THE APPLICANT, DATED SEPTEMBER 7, 1971, TO THE ASSOCIATION. THIS LETTER READS AS FOLLOWS:

"DEAR SIR:

PLEASE BE ADVISED THAT ALL MEMBERS OF ANY OUTSIDE LOCAL UNION FROM THE PROVINCE OF ONTARIO, BEING SHIPPED BY HIS EMPLOYER, WILL NOT BE CLEARED BY LOCAL 786 UNTIL HE HAS MET THE FOLLOWING REQUIREMENTS. HE MUST COMPLY WITH ARTICLE 21, SEC. 42 AS SET OUT BELOW: WHEN A MEMBER IS TO BE SHIPPED BY HIS EMPLOYER FROM THE LOCAL UNION OF HIS MEMBERSHIP TO SOME OTHER LOCAL UNION, HE SHALL OBTAIN FROM HIS EMPLOYER A STATEMENT SETTING FORTH THE JOB SUCH MEMBER IS TO BE EMPLOYED ON AND THE LOCATION OF THE WORK. HE SHALL ALSO OBTAIN A CLEARANCE CARD FROM THE LOCAL UNION OF HIS MEMBERSHIP AND PRESENT BOTH THE CLEARANCE CARD AND HIS EMPLOYER'S STATEMENT TO THE REPRESENTATIVE OF THE LOCAL UNION IN WHOSE JURISDICTION SUCH MEMBER IS BEING SHIPPED. THE LOCAL UNION SHALL ACCEPT THE CLEARANCE CARD, AND SUCH MEMBER SHALL BE ISSUED TRAVEL SERVICE RECEIPTS UPON PAYMENT OF TRAVEL SERVICE DUES.

A COPY OF THE CONSTITUTION IS ENCLOSED FOR  
YOUR PERUSAL.

YOURS TRULY

(SIGNED)  
JAMES TYE  
BUSINESS MANAGER"

20. THE WITNESS INFORMED THE BOARD THAT THE RESPONDENT HAS EMPLOYED MEMBERS OF THE APPLICANT AND THAT SUCH EMPLOYEES WERE ON STRIKE DURING THE SUMMER OF 1971. MR. FARRANT ALSO TESTIFIED THAT THE RESPONDENT MADE CHECK OFF SUBSEQUENT TO THE SIGNING OF THE COLLECTIVE AGREEMENT WITH RESPECT TO WORK IT HAD DONE AT THE CAMBRIAN COLLEGE IN SUDBURY AND THE WHITE POINT SCHOOL IN SAULT STE. MARIE. THE RESPONDENT HAD, AT THIS TIME, IN ITS EMPLOY THREE MEN FROM THE APPLICANT AND TWO MEN FROM LOCAL 721 WORKING UNDER WORK PERMITS OBTAINED FROM THE APPLICANT. THE CHECK OFF ON ACCOUNT OF SUCH EMPLOYEES WAS MADE UNDER THE PROVISIONS OF THE COLLECTIVE AGREEMENT AND THE APPLICANT HAS RECEIVED SUCH CHECK OFFS BECAUSE THE RESPONDENT HAS BEEN WORKING IN THE TERRITORIAL JURISDICTION OF THE APPLICANT. RESPONDENT HAS SENT A CHEQUE TO COVER THE AMOUNTS OF THESE CHECK OFFS TO THE APPLICANT. THIS CHEQUE WAS DATED JANUARY 21, 1972, AND WAS CASHED BY THE APPLICANT IN THE FOLLOWING MONTH.

21. MR. FARRANT STATED THAT HE WAS INFORMED THAT MEN WILL HAVE TO OBTAIN PERMITS FROM THE APPLICANT IN ORDER TO WORK WITHIN THE TERRITORIAL JURISDICTION OF THE APPLICANT AND THAT HE WAS NOT TOLD BY THE APPLICANT THAT THE COLLECTIVE AGREEMENT WAS NOT IN EFFECT. THE WELFARE PAYMENTS MADE BY THE RESPONDENT TO THE APPLICANT WERE BASED ON THE NEW SCHEDULE CONTAINED IN THE COLLECTIVE AGREEMENT.

22. UNDER CROSS-EXAMINATION, MR. FARRANT STATED THAT HE FIRST USED MEN FROM THE APPLICANT ON NOVEMBER 26, 1971 (SUBSEQUENT TO THE COLLECTIVE AGREEMENT DATED AUGUST 31, 1971.) THE WITNESS REITERATED THAT THE RESPONDENT HAD NOT RECEIVED ANY NOTICE THAT THE APPLICANT DISPUTED THE COLLECTIVE AGREEMENT. THE WITNESS ALSO STATED THAT ON NOVEMBER 26, 1971, THE RESPONDENT RECEIVED NOTICE OF THE INSTANT APPLICATION FROM THE BOARD, AND THAT ALTHOUGH HE READ THE APPLICATION, HE DID NOT PAY ANY ATTENTION TO THE CONTENTS OF PAGE 2 OF THE APPLICATION. ON JANUARY 31, 1972, THE DATE FOR THE CHECK OFF, THE WITNESS AGREED THAT THE RESPONDENT WAS AWARE OF THE PROCEEDING BEFORE THE BOARD. IN ADDITION, THE WITNESS AGREED THAT THE RESPONDENT HAD RECEIVED THE LETTER FROM MR. ECCLES ON BEHALF OF THE ASSOCIATION. MR. FARRANT ALSO STATED THAT THE RESPONDENT DID NOT RECEIVE A LETTER REGARDING ANY OTHER LOCALS.

23. THE INTERNATIONAL CALLED MR. NORMAN WILSON, AN EXECUTIVE DIRECTOR IN CHARGE OF CANADIAN OPERATIONS FOR THE INTERNATIONAL, AS A WITNESS. THE WITNESS IDENTIFIED A COPY OF THE CONSTITUTION OF THE

INTERNATIONAL. MR. WILSON, IN HIS EVIDENCE, REFERRED TO VARIOUS ARTICLES AND SECTIONS OF THE CONSTITUTION AT LENGTH. UNDER THE CONSTITUTION, THE GENERAL PRESIDENT AND THE EXECUTIVE BOARD HAVE GENERAL SUPERVISION OVER VARIOUS STAGES OF NEGOTIATIONS AND STRIKES. THEY HAVE POWER TO ISSUE, SUSPEND AND PUT LOCAL UNIONS UNDER SUPERVISION WITH THE RIGHT TO APPEAL TO THE GENERAL EXECUTIVE COUNSEL. THE WITNESS STATED THAT HIS ROLE IN BARGAINING AS AN INTERNATIONAL REPRESENTATIVE IS TO CO-ORDINATE THE ACTIVITIES OF LOCALS AND TO ASSIST IN ARRIVING AT ACCEPTABLE COLLECTIVE AGREEMENTS. MR. WILSON INFORMED THE BOARD THAT PRIOR TO AUGUST 1971, THERE WERE THREE TYPES OF COLLECTIVE AGREEMENTS IN EXISTENCE. FIRSTLY, A COLLECTIVE AGREEMENT BETWEEN LOCAL 721, 736 AND 759 WITH THE STRUCTURAL STEEL ASSOCIATION; SECONDLY, BETWEEN LOCAL 786 AND THE STRUCTURAL STEEL ASSOCIATION; AND THIRDLY, BETWEEN LOCAL 700 AND A NUMBER OF GENERAL EMPLOYERS. SUCH COLLECTIVE AGREEMENTS HAD A COMMON EXPIRY DATE OF APRIL 30, 1971. NEGOTIATIONS FOR THE 1971 COLLECTIVE AGREEMENT WERE CHANGED TO MULTI-LOCAL BARGAINING CONDUCTED JOINTLY AND NOT SEPARATELY.

24. THE WITNESS INFORMED THE BOARD THAT MEETINGS BEGAN IN FEBRUARY 1971, BETWEEN THE LOCALS REFERRED TO AND THE ASSOCIATION AND LASTED FOR APPROXIMATELY 160 DAYS. MEETINGS WERE HELD ON MARCH 9, 1971, BETWEEN THE ASSOCIATION AND ALL OF THE LOCAL UNIONS. SUBSEQUENTLY, MR. WILSON MET WITH THE LOCALS BUT NOT WITH THE ASSOCIATION UNTIL JULY 19, 1971. HOWEVER, MEETINGS CONTINUED TO TAKE PLACE BETWEEN THE ASSOCIATION AND ALL OF THE LOCAL TRADE UNIONS. BETWEEN MARCH AND JULY 1971, THE WITNESS WAS NOT DIRECTLY INVOLVED BUT WAS KEPT ADVISED AS TO WHAT WAS HAPPENING. MEETINGS WERE CONDUCTED DURING THE CONCILIATION PROCESS AND THE EARLIEST DATE FOR THE LOCALS TO CONDUCT A LAWFUL STRIKE WAS MID-JULY 1971.

25. THE TERRITORIAL JURISDICTION OF THE LOCAL UNIONS ARE SET FORTH ON PAGE SIX OF THE COLLECTIVE AGREEMENT. MR. WILSON TESTIFIED THAT MEMBERS OF THE LOCAL TRADE UNION ARE THE PERSONS WHO ACTUALLY GO ON STRIKE AND THAT ALL MEMBERS ARE MEMBERS OF THE LOCAL TRADE UNION. DURING THE EARLY PART OF JULY 1971, THE WITNESS BECAME INVOLVED IN THE NEGOTIATIONS AGAIN BECAUSE PERMISSION TO STRIKE WAS REQUESTED AND IT WAS REFERRED TO THE WITNESS. AT THIS STAGE, NEGOTIATIONS HAD REACHED AN IMPASSE AND ON JULY 13, 1971, MR. WILSON SENT A TELEGRAM TO THE GENERAL SECRETARY OF THE INTERNATIONAL REFERRING TO THE NEGOTIATIONS AND STATING THAT THE LOCAL UNION'S NEGOTIATIONS COMMITTEE WERE UNABLE TO REACH AGREEMENT ON CONTRACT LANGUAGE. THE TELEGRAM WENT ON TO STATE THAT WORKING CONDITIONS AND MONETARY PACKAGE HAD NOT BEEN RESOLVED AND THAT UNLESS THE SITUATION CHANGED, THE LABOUR RELATIONS ACT WOULD LEGALLY ALLOW THE LOCAL UNIONS TO STRIKE OR EMPLOYERS TO LOCK OUT ON OR AFTER JULY THE 15TH. MR. WILSON ADDED, IN THE TELEGRAM, THAT HE RECOMMENDED THAT THE BUSINESS AGENT OF EACH OF THE LOCALS INVOLVED BE INSTRUCTED WITH A COPY OF INSTRUCTIONS TO EACH LOCAL PRESIDENT TO FORWARD IMMEDIATELY TO THE OFFICE OF THE INTERNATIONAL A COPY OF THE AGREED UPON CONTRACT LANGUAGE, WORKING CONDITIONS ARRIVED AT TO DATE AS WELL AS THE LOCALS' AND EMPLOYERS' PRO-



POSALS FOR ANY CONTRACT LANGUAGE OR WORKING CONDITIONS NOT AGREED TO IN THE CURRENT NEGOTIATIONS WITH THE ASSOCIATION.

26. ON JULY 14, 1971, MR. WILSON RECEIVED A TELEGRAM FROM THE GENERAL SECRETARY OF THE INTERNATIONAL. THIS TELEGRAM READS AS FOLLOWS:

"NORMAN A. WILSON  
11 ADELAIDE STREET WEST  
SUITE 1003  
TORONTO ONTARIO CANADA

FOLLOWING WIRE HAS BEEN DIRECTED THIS DATE TO THE PRESIDENT AND THE BUSINESS AGENT OF EACH OF THE FOLLOWING LOCAL UNIONS:

700 - WINDSOR ONTARIO  
721 - TORONTO ONTARIO  
736 - HAMILTON ONTARIO  
765 - OTTAWA ONTARIO  
786 - SUDBURY ONTARIO

QUOTE

INFORMATION RECEIVED AT THIS OFFICE WOULD INDICATE YOUR LOCAL UNION NEGOTIATING COMMITTEE HAS BEEN UNABLE TO REACH AGREEMENT ON CONTRACT LANGUAGE, WORKING CONDITIONS AND MONETARY PACKAGE THROUGH MEETINGS WITH REPRESENTATIVES OF THE ONTARIO ERECTORS ASSOCIATION. YOU ARE HEREBY INSTRUCTED TO FORWARD TO THIS OFFICE IMMEDIATELY A COPY OF THE LATEST CONTRACTOR'S PROPOSAL AS TO CONTRACT LANGUAGE, WORKING CONDITIONS AND MONETARY PACKAGE ARRIVED AT TO DATE IN ORDER THAT AN ACCURATE REVIEW MIGHT BE MADE OF THE EXISTING SITUATION I CALL TO YOUR ATTENTION ARTICLE TWENTY-ONE SECTION TWENTY-EIGHT OF THE CONSTITUTION OF THIS INTERNATIONAL ASSOCIATION WHICH FORBIDS ANY LOCAL UNION TO CALL ANY STRIKE WITHOUT FIRST SECURING THE SANCTION AND THE APPROVAL OF THE GENERAL PRESIDENT THE LAST PROPOSAL MADE BY THE ONTARIO ERECTORS ASSOCIATION WOULD HAVE TO BE REVIEWED PRIOR TO ANY STRIKE PERMISSION FROM INTERNATIONAL HEADQUARTERS

JUEL D. DRAKE  
GENERAL SECRETARY  
UNQUOTE THIS IS FOR YOUR INFORMATION

27. MR. WILSON EXPLAINED THAT THE PURPOSE OF THE ABOVE REFERRED TO EXCHANGE OF CORRESPONDENCE WAS TO MAKE SURE THAT A STRIKE WAS NEC-

ESSARY. ON JULY 19, 1971, A MEETING WAS HELD AT THE HEADQUARTERS OF THE INTERNATIONAL AND THE LOCAL TRADE UNIONS INVOLVED WERE INVITED TO ATTEND. A REPRESENTATIVE OF THE APPLICANT WAS PRESENT AT THIS MEETING. AT THIS MEETING IT WAS AGREED THAT FOLLOWING THE RETURN TO TORONTO AN ATTEMPT OUGHT TO BE MADE TO RESOLVE THE OUTSTANDING DIFFERENCES WITH THE ASSOCIATION. MR. WILSON MET WITH THE LOCAL TRADE UNIONS IN TORONTO ON JULY 21, 1971. ALL OF THE LOCALS WERE INVITED TO THIS MEETING. FURTHER, THE APPLICANT, ALTHOUGH ADVISED OF THE MEETING, DID NOT ATTEND. PRIOR TO AUGUST 17, 1971, THE APPLICANT DID NOT ATTEND ANY MEETINGS TO RESOLVE THE OUTSTANDING DIFFERENCES WITH THE ASSOCIATION. MR. WILSON WAS NOT GIVEN ANY REASON WHY THE APPLICANT DID NOT ATTEND. ALL OF THE OTHER LOCALS INVOLVED ATTENDED. A FURTHER MEETING WAS CONDUCTED WITH THE ASSOCIATION IN AN ATTEMPT TO RESOLVE THE OUTSTANDING DIFFERENCES REGARDING THE LANGUAGE OF THE PROPOSED A COLLECTIVE AGREEMENT.

28. LOCALS 700, 721, 736 AND 765 MET ON JULY 22 AND 23, 1971 AT THE DEPARTMENT OF LABOUR. ONCE AGAIN, THE APPLICANT DID NOT ATTEND THIS MEETING. AT THIS MEETING, MOST OF THE LANGUAGE DIFFICULTIES WERE RESOLVED BUT NO NEW MONETARY OFFER WAS TABLED AT THAT TIME. AT THIS MEETING, THE FOUR LOCALS AND THE ASSOCIATION DID NOT AGREE ON WAGES, AND, APART FROM THE NON-PARTICIPATION OF THE APPLICANT, THIS WAS THE MAJOR OBSTACLE TO THE NEW COLLECTIVE AGREEMENT.

29. ON JULY 26, 1971, MR. WILSON TESTIFIED THAT HE SENT THE FOLLOWING TELEGRAM TO THE GENERAL SECRETARY OF THE INTERNATIONAL:

"REPRESENTATIVES LOCACALS (SIC) 700 WINDSOR,  
721 TORONTO, 736 HAMILTON, 765 OTTAWA  
MET JULY 22 AND 23 WITH REPRESENTATIVES  
ONTARIO ERECTORS ASSOCIATION AND RESOLVED  
PREVIOUS DIFFERENCES ON CONTRACT LANGUAGE  
FOR NEW AGREEMENT WITHOUT REACHING  
AGREEMENT ON WAGES FRINGES. LOCALS FINAL  
POSITION ON WAGES FRINGES 2.50 PER HOUR  
OVER 2 YEAR PERIOD. ERECTORS LAST  
PROPOSAL 2.10 PER HOUR OVER SAME PERIOD.  
COMMUTING AND BOARD ALLOWANCE ALSO NOT  
RESOLVED. AS THESE DIFFERENCES DO NOT  
APPEAR TO BE READILY RESOLVED IN ONTARIO  
LABOUR RELATIONS ACT PERMIT STRIKE OR  
LOCKOUT ACTION I RECOMMEND LOCALS LISTED  
BE GIVEN PERMISSION TO IMPLEMENT STRIKE  
ACTION.

NORMAN A WILSON, DIRECTOR CANADIAN OPERATIONS"

SIGNIFICANTLY, THE TELEGRAM REFERRED TO IN PARAGRAPH 21 HEREIN DID NOT REFER TO THE APPLICANT. MR. WILSON EXPLAINED THAT THIS OMISSION WAS DELIBERATE BECAUSE THE APPLICANT HAD NOT ATTEMPTED TO RESOLVE THE

DIFFERENCES OUTSTANDING BETWEEN LOCAL TRADE UNIONS AND THE ASSOCIATION. ON JULY 26, 1971, THE GENERAL SECRETARY OF THE INTERNATIONAL SENT A TELEGRAM TO LOCAL UNIONS 700, 721, 736 AND 765 REVIEWING THE STATE OF AFFAIRS BETWEEN THESE FOUR LOCALS AND THE ASSOCIATION AND GRANTING PERMISSION FOR THESE FOUR LOCALS TO REFUSE TO FURNISH MEMBERS TO THE MEMBERS OF THE ASSOCIATION. THE APPLICANT DID NOT RECEIVE PERMISSION TO STRIKE. THE OTHER FOUR LOCALS WENT ON STRIKE AS A RESULT OF THE PERMISSION GRANTED IN THE TELEGRAM FROM THE GENERAL SECRETARY. HOWEVER, PRIOR TO JULY 26, 1971, THE MEMBERS OF THE APPLICANT WENT ON STRIKE AGAINST SOME OF THE MEMBERS OF THE ASSOCIATION.

30. MR. WILSON GAVE EVIDENCE THAT SOME OF THE STRIKES COMMENCED BY MEMBERS OF THE APPLICANT WERE LAWFUL UNDER THE PROVISIONS OF THE LABOUR RELATIONS ACT WHILE OTHER STRIKES COMMENCED BY MEMBERS OF THE APPLICANT WERE UNLAWFUL UNDER THE LABOUR RELATIONS ACT. THE WITNESS ALSO STATED THAT HE RECEIVED COMPLAINTS REGARDING ILLEGAL STRIKES AND PICKETING FROM CERTAIN EMPLOYERS. HE TESTIFIED THAT HE RECEIVED INSTRUCTIONS FROM THE GENERAL SECRETARY AND GENERAL PRESIDENT OF THE INTERNATIONAL REGARDING THE CONDUCT OF THE APPLICANT AND ITS MEMBERS. MR. WILSON INFORMED THE BOARD THAT HE SPOKE TO MR. TYE CONCERNING THE STRIKES CONDUCTED BY THE APPLICANT AND ITS MEMBERS AND HAD A REPRESENTATIVE VISIT MR. TYE. THE WITNESS INFORMED THE BOARD THAT MR. TYE WAS INSTRUCTED TO COMPLY WITH THE COLLECTIVE AGREEMENT AND THAT MR. TYE INFORMED THE WITNESS THAT THERE WAS A LOT OF CHAOS WITHIN THE TERRITORIAL JURISDICTION OF THE APPLICANT AND THAT HE COULD NOT CONTROL THE SITUATION.

31. THE GENERAL SECRETARY OF THE INTERNATIONAL SENT A TELEGRAM TO MR. TYE, THE BUSINESS AGENT OF THE APPLICANT ON JUNE 25, 1971, DIRECTING HIM TO SEE THAT ALL MEMBERS RETURN TO WORK ON CERTAIN PROJECTS. ON JUNE 28, 1971, MR. TYE WROTE A LETTER TO THE GENERAL SECRETARY OF THE INTERNATIONAL ADVISING THAT THE IRON WORKERS AT TIMMINS REFUSED TO WORK IN SPITE OF HIS VERBAL ORDERS.

32. ON AUGUST 17, 1971, MR. WILSON CALLED A MEETING OF THE FIVE LOCAL UNIONS INCLUDING THE APPLICANT. MR. TYE ATTENDED THIS MEETING. THOSE PRESENT OF THE MEETING WENT OVER THE OLD PROBLEMS AND THE REPRESENTATIVES OF THE OTHER FOUR LOCALS DISCUSSED THE POINT CONCERNING THE REFUSAL OF THE APPLICANT TO SIGN THE PROPOSED COLLECTIVE AGREEMENT. THE WITNESS GAVE EVIDENCE THAT MR. TYE WAS NOT PREPARED TO RESOLVE THE MATTER AND THE MEETING ENDED WITHOUT ARRANGEMENTS FOR FURTHER MEETINGS. THE WITNESS TESTIFIED THAT AT THIS POINT, THE ASSOCIATION STATED THAT THE AGREEMENT WAS TO BE WITH ALL FIVE LOCAL UNIONS OR THERE WOULD BE NO COLLECTIVE AGREEMENT. MR. WILSON STATED THAT THERE WAS NO GREAT DIFFERENCE WITH OTHER LOCAL UNIONS APART FROM THE APPLICANT. AT THIS MEETING, MR. TYE TOOK THE POSITION THAT THE APPLICANT WAS NOT WILLING TO SIGN THE OTHER FOUR LOCALS. THE OTHER FOUR LOCALS REACHED AGREEMENT WITH THE ASSOCIATION WITH THE EXCEPTION OF MONEY MATTERS.



33. ON AUGUST 18TH AND 19TH, MR. WILSON AGAIN MET WITH ALL LOCALS EXCEPT THE APPLICANT. THERE WAS NO EXPLANATION AS TO WHY THE APPLICANT DID NOT ATTEND THESE MEETINGS. AT THE TIME OF THE MEETINGS, A REPRESENTATIVE OF THE FOUR LOCALS OTHER THAN THE APPLICANT TELEPHONED THE ASSOCIATION TO FIND A COMMON GROUND. THESE FOUR LOCALS CAME TO A COMMON POSITION WHICH WAS PUT TO THE ASSOCIATION.

34. ON AUGUST 23, 1971, THE FOUR LOCAL UNIONS OTHER THAN THE APPLICANT MET WITH THE ASSOCIATION AND RESOLVED ALL BUT TWO MINOR ITEMS. AT THIS POINT THE FOUR LOCALS OTHER THAN THE APPLICANT DECIDED TO TAKE BACK THE PROPOSED COLLECTIVE AGREEMENT TO THEIR LOCAL TRADE UNIONS FOR APPROVAL. HOWEVER, THE REPRESENTATIVES OF THESE FOUR LOCAL UNIONS AGREED TO RECOMMEND THE PROPOSED COLLECTIVE AGREEMENT TO THEIR MEMBERSHIP. MR. TYE AND THE PRESIDENT OF THE APPLICANT CAME TO THIS MEETING BUT WERE NOT PREPARED TO CHANGE THEIR POSITION REGARDING NOT SIGNING THE COLLECTIVE AGREEMENT. HOWEVER, MR. TYE AND THE PRESIDENT OF THE APPLICANT DID NOT MEET WITH THE ASSOCIATION.

35. THE MEMBERSHIP OF THE FOUR LOCAL UNIONS OTHER THAN THE APPLICANT RATIFIED THE PROPOSED COLLECTIVE AGREEMENT WITH THE ASSOCIATION. HOWEVER, WHEN MR. TYE AND THE PRESIDENT OF THE APPLICANT PUT THEIR PROPOSALS TO THEIR MEMBERSHIP ON OR ABOUT AUGUST 25, 1971, THE MEMBERSHIP DECISIVELY REJECTED THE PROPOSED COLLECTIVE AGREEMENT.

36. ON AUGUST 30, 1971, MR. WILSON TESTIFIED THAT HE MET WITH THE OTHER FOUR LOCALS TO REVIEW TO THE POSITION OF THE APPLICANT. AT THIS TIME IT WAS QUITE CLEAR THAT THE POSITION OF THE APPLICANT WAS PREVENTING THE SIGNING OF A COLLECTIVE AGREEMENT BETWEEN THE ASSOCIATION, AND LOCAL UNIONS 700, 721, 736, 765 AND 786. THE REPRESENTATIVES OF THE LOCALS OTHER THAN THE APPLICANT WANTED TO KNOW WHAT MR. WILSON PROPOSED TO DO TO RESOLVE THE POSITION IN WHICH THE ASSOCIATION AND THE FOUR LOCAL UNIONS FOUND THEMSELVES.

37. IT APPEARS THAT ON AUGUST 30, 1971, MR. TYE AND HIS COMMITTEE MET WITH THE MEMBERS OF THE ASSOCIATION BUT WERE UNABLE TO RESOLVE THE OUTSTANDING DIFFERENCE CONCERNING THE PROPOSED COLLECTIVE AGREEMENT. THE WITNESS INFORMED THE BOARD THAT ON AUGUST 30, 1971, HE SPOKE TO MR. TYE AND HIS COMMITTEE AND OFFERED TO TRY AND HELP TO RESOLVE THE SITUATION. HOWEVER, MR. TYE AND HIS COMMITTEE REFUSED TO BUDGE FROM THEIR POSITION AND ADVISED MR. WILSON THAT THEY WERE RETURNING TO SUDBURY.

38. ON THE MORNING OF AUGUST 31, 1971, MR. WILSON SPOKE TO THE INTERNATIONAL AND REQUESTED ITS PERMISSION TO END THE STRIKE. MR. WILSON GAVE EVIDENCE THAT ON AUGUST 31, 1971, HE SENT A TELEGRAM TO THE INTERNATIONAL REQUESTING AUTHORIZATION TO SIGN THE AGREEMENT ON BEHALF OF THE APPLICANT AND SETTLE THE STRIKE AND LOCKOUT THEN IN PROGRESS. MR. WILSON RECEIVED A REPLY FROM THE GENERAL SECRETARY OF THE INTERNATIONAL WHICH AUTHORIZED HIM TO SIGN THE COLLECTIVE AGREEMENT ON BEHALF OF THE APPLICANT AND TO END THE STRIKE. THIS PERMISSION WAS GRANTED IN RECOGNITION OF THE LOSSES ACCRUING TO THE MEMBERSHIP OF THE FIVE

LOCALS IN ONTARIO AS A RESULT OF THE FAILURE TO SIGN THE COLLECTIVE AGREEMENT. THE WITNESS TESTIFIED THAT THE INTERNATIONAL ALSO TOOK INTO CONSIDERATION THAT CERTAIN PROJECTS HAD BEEN CANCELLED AND THAT THE LOCAL UNIONS WERE LOSING WORK TO OTHER TRADES. THE STRIKE HAD LASTED APPROXIMATELY A MONTH AND THE WITNESS STATED THAT THERE WAS FEAR THAT THERE WOULD BE A SITUATION DEVELOPING SIMILAR TO 1967 WHEN A FOUR MONTH STRIKE OCCURRED. THE DECISION TO SIGN THE COLLECTIVE AGREEMENT WAS MADE VERY RELUCTANTLY AND ON AUGUST 31, 1971, MR. WILSON AND THE FOUR LOCALS MET WITH THE ASSOCIATION TO SIGN THE COLLECTIVE AGREEMENT.

39. MR. WILSON INFORMED THE BOARD THAT HE SIGNED ON BEHALF OF THE APPLICANT AND THAT HE TOLD ALL OTHER PARTIES PRESENT THAT HE WAS SO DOING AND THAT HE HAD THE AUTHORITY TO DO SO. MR. WILSON ADVISED THE APPLICANT OF THE SIGNING OF THE COLLECTIVE AGREEMENT ON ITS BEHALF ON EITHER SEPTEMBER 1ST OR SEPTEMBER 2ND, 1971. AFTER THE SIGNING OF THE COLLECTIVE AGREEMENT, THE MEMBERS OF THE APPLICANT RETURNED TO WORK AND THE TERMS OF THAT NEW COLLECTIVE AGREEMENT WERE APPLIED. THE WITNESS GAVE EVIDENCE THAT THERE WAS NO CHALLENGE BY EITHER MR. TYE OR BY THE APPLICANT TO MR. WILSON'S AUTHORITY TO SIGN THE COLLECTIVE AGREEMENT ON BEHALF OF THE APPLICANT. IN ADDITION, MR. WILSON STATED THAT PRIOR TO THIS APPLICATION BEING FILED, HE WAS UNAWARE THAT THE APPLICANT HAD IN ANY WAY CHALLENGED THE COLLECTIVE AGREEMENT. MR. WILSON GAVE EVIDENCE THAT A DAY OR TWO AFTER THE SIGNING OF THE COLLECTIVE AGREEMENT, MR. TYE REQUESTED A COPY OF IT AND DID NOT CHALLENGE THE WITNESS'S AUTHORITY TO SIGN THE COLLECTIVE AGREEMENT ON BEHALF OF THE APPLICANT.

40. UNDER CROSS-EXAMINATION, MR. WILSON AGREED THAT THE APPLICANT HAD BEEN CHARTERED UNDER THE CONSTITUTION OF THE INTERNATIONAL AT ALL TIMES RELEVANT TO THIS APPLICATION FOR CERTIFICATION. IN ADDITION, THE WITNESS AGREED THAT THE ASSOCIATION HAD MADE IT QUITE CLEAR THAT THERE COULD BE NO COLLECTIVE AGREEMENT SIGNED UNLESS IT WAS BINDING BY ALL FIVE LOCALS.

41. UNDER FURTHER CROSS-EXAMINATION BY COUNSEL FOR THE APPLICANT, MR. WILSON STATED THAT HE KNEW THAT MR. TYE DID NOT AGREE WITH SOME TERMS OF THE COLLECTIVE AGREEMENT AND THAT HE KNEW THAT THE MEMBERSHIP OF THE APPLICANT HAD REJECTED THE TERMS OF THE COLLECTIVE AGREEMENT PRIOR TO THE SIGNING OF IT. HOWEVER, MR. WILSON STATED THAT AT THAT MEETING THERE WAS NOT A FULL DISCUSSION OF THE MATTER OF THE PROPOSED COLLECTIVE AGREEMENT AND THAT HE HAD SUGGESTED TO MR. TYE THAT A SPECIAL MEETING BE CALLED IN ORDER TO VOTE ON THE PROPOSED COLLECTIVE AGREEMENT. MR. WILSON ALSO AGREED THAT THE ASSOCIATION WAS AWARE OF THE RESULTS OF THE MEETING OF THE MEMBERSHIP OF THE APPLICANT CONCERNING THE PROPOSED COLLECTIVE AGREEMENT.

42. UNDER CONTINUED CROSS-EXAMINATION, MR. WILSON REITERATED THAT HE WAS NOT AWARE THAT THE APPLICANT QUESTIONED HIS AUTHORITY TO SIGN THE COLLECTIVE AGREEMENT ON ITS BEHALF. HE AGREED THAT WHILE HE WAS

AWARE OF OBJECTIONS BY THE APPLICANT TO SOME PROVISIONS IN THE AGREEMENT, HE WAS NOT AWARE OF ANY OBJECTIONS TO HIS AUTHORITY TO SIGN THE COLLECTIVE AGREEMENT ON BEHALF OF THE APPLICANT. THE ESSENCE OF THE DISAGREEMENT BY LOCAL 786 WAS THAT IT DID NOT WANT MEN FROM OTHER LOCALS OF THE INTERNATIONAL TO WORK IN THE SUDBURY AREA UNLESS ALL MEMBERS OF THE APPLICANT WERE EMPLOYED.

43. MR. WILSON AGREED THAT IT WAS THE LOCALS WHICH CALLED STRIKE AND NOT THE INTERNATIONAL. THE WITNESS AGREED THAT IN THE PAST SOME OF THE FIVE LOCALS HAD SIGNED SEPARATE COLLECTIVE AGREEMENTS WITH EMPLOYERS OR ASSOCIATIONS OF EMPLOYERS. IN ADDITION, THE WITNESS AGREED THAT IT WAS POSSIBLE TO HAVE A STRIKE END WITHOUT A COLLECTIVE AGREEMENT BEING SIGNED. THE WITNESS ALSO AGREED THAT HE DID NOT TELL THE APPLICANT PRIOR TO THE SIGNING OF THE COLLECTIVE AGREEMENT THAT HE WAS IN FACT GOING TO SIGN THE COLLECTIVE AGREEMENT ON BEHALF OF THE APPLICANT.

44. IN RE-EXAMINATION MR. WILSON STATED THAT HE RECEIVED CONFIRMATION FROM THE GENERAL PRESIDENT OF THE INTERNATIONAL OF HIS AUTHORITY TO SIGN ON BEHALF OF THE APPLICANT.

45. THE APPLICANT DID NOT CALL ANY WITNESSES TO TESTIFY BEFORE THE BOARD.

46. THE EVIDENCE ESTABLISHES THAT SUBSEQUENT TO THE EXECUTION OF THE COLLECTIVE AGREEMENT BETWEEN THE ASSOCIATION AND LOCAL UNIONS 700, 721, 736, 765 AND 786 OF THE INTERNATIONAL ON AUGUST 31, 1971, THE APPLICANT INSISTED UPON ITS RIGHTS UNDER THIS COLLECTIVE AGREEMENT. THE EVIDENCE ALSO ESTABLISHES THAT MR. WILSON PURPORTED TO SIGN THE COLLECTIVE AGREEMENT ON BEHALF OF THE APPLICANT AS ITS AGENT. THERE IS NO DOUBT THAT THE APPLICANT ACCEPTED THE BENEFITS UNDER THIS COLLECTIVE AGREEMENT. FOR EXAMPLE, IT SUPPLIED A CHECK OFF AUTHORIZATION PURSUANT TO THE COLLECTIVE AGREEMENT, SUPPLIED MEN AND ACCEPTED CHECK OFF ON THE NEW BASIS CONTAINED UNDER THE ABOVE REFERRED TO COLLECTIVE AGREEMENT. MOREOVER, THE MEMBERSHIP OF THE APPLICANT ACCEPTED THE NEW WAGE SCALE CONTAINED IN THIS COLLECTIVE AGREEMENT WHEN PERFORMING THE WORK SUBSEQUENT TO THE DATE OF ITS EXECUTION. IT IS HIGHLY SIGNIFICANT THAT THE APPLICANT NEVER FORMALLY INFORMED THE ASSOCIATION THAT THIS COLLECTIVE AGREEMENT DID NOT APPLY TO IT. WHILE THERE WERE RUMOURS TO THE EFFECT THAT THE APPLICANT WAS UNHAPPY WITH CERTAIN PROVISIONS OF THE EXECUTED COLLECTIVE AGREEMENT, THE APPLICANT DID NOT IN FACT AT ANY TIME SPECIFICALLY DECLARE THAT THIS COLLECTIVE AGREEMENT DID NOT APPLY TO IT.

47. THE APPLICANT MADE MUCH OF THE FACT THAT IN AN EARLIER APPLICATION, NAMELY, NORRIS IRON WORKS LIMITED, BOARD FILE NO. 1108-71-R IT HAD EXPRESSED ITS REPUDIATION OF THE COLLECTIVE AGREEMENT REFERRED TO ABOVE. THE BOARD HAS CONSIDERED THE REPRESENTATIONS OF THE APPLICANT ON THIS POINT AND FINDS THAT THE MOST THAT CAN BE SAID ABOUT THE ATTITUDE OF THE APPLICANT AS EVIDENCED IN THE NORRIS IRON WORKS LIMITED APPLICATION IS, THAT THE APPLICANT STATED THAT THIS LATTER COMPANY HAD



AN AGREEMENT WITH THE ASSOCIATION WHICH IS NOT SIGNED BY THE APPLICANT. IN OUR VIEW, SUCH A STATEMENT DOES NOT AMOUNT TO A REPUDIATION OF THE COLLECTIVE AGREEMENT REFERRED TO ABOVE. THE EVIDENCE ESTABLISHES THAT MR. WILSON PURPORTED TO EXECUTE THE COLLECTIVE AGREEMENT ON AUGUST 31, 1971, ON BEHALF OF THE APPLICANT AND DID NOT PURPORT TO ACT FOR EITHER HIMSELF OR FOR THE INTERNATIONAL IN THIS REGARD.

48. EVEN THOUGH MR. WILSON MAY HAVE ACTED WITHOUT PRECEDENT AUTHORITY FROM THE APPLICANT TO SIGN THE COLLECTIVE AGREEMENT ON BEHALF OF THE APPLICANT, NEVERTHELESS, THE ACT OF EXECUTING THE COLLECTIVE AGREEMENT ON AUGUST 31, 1971, ON BEHALF OF THE APPLICANT BECAME THE ACT OF THE APPLICANT WHEN SUBSEQUENTLY RATIFIED BY THE IMMEDIATE CONDUCT OF THE APPLICANT AND ITS MEMBERSHIP. THE BOARD FINDS, ON THE BASIS OF ALL THE EVIDENCE BEFORE IT, THAT SUCH RATIFICATION IS IMPLIED FROM THE ACTS OF THE APPLICANT AND ITS MEMBERSHIP. MOREOVER, ONCE RATIFICATION HAS TAKEN PLACE IN THESE CIRCUMSTANCES, THE EFFECT OF SUCH RATIFICATION IS TO PUT ALL THE PARTIES CONCERNED IN THE SAME POSITION AS THAT IN WHICH THEY WOULD HAVE BEEN IF THE ACT RATIFIED HAD BEEN PREVIOUSLY AUTHORIZED BY THE APPLICANT. SEE CHITTY, CONTRACTS (23RD ED.) VOL. 2, P. 17; HALSBURY'S LAWS OF ENGLAND VOL. 1, (3RD ED.) PPS. 173 AND 178 AND POWELL, THE LAW OF AGENCY (1952) PPS. 102 TO 125.

49. HAVING REGARD TO THE FOREGOING, THE BOARD FINDS THAT THE APPLICANT IS BOUND BY THE COLLECTIVE AGREEMENT BETWEEN THE ASSOCIATION AND LOCAL UNIONS 700, 721, 736, 765 AND 786 OF THE INTERNATIONAL EXECUTED ON AUGUST 31, 1971, AND THAT THIS AGREEMENT COVERS THE EMPLOYEES AFFECTED BY THIS APPLICATION. THE BOARD FINDS THAT THIS COLLECTIVE AGREEMENT IS A BAR TO THIS APPLICATION FOR CERTIFICATION.

50. HAVING REGARD TO THE ABOVE FINDINGS, IT IS NOT NECESSARY FOR THE BOARD TO DETERMINE WHETHER OR NOT MR. WILSON HAD THE AUTHORITY UNDER THE CONSTITUTION OF THE INTERNATIONAL TO EXECUTE THE COLLECTIVE AGREEMENT ON BEHALF OF THE APPLICANT OR WHETHER ON THE FACTS BEFORE THE BOARD THE RESPONDENT HAD CONTRIBUTED FINANCIAL OR OTHER SUPPORT TO THE APPLICANT CONTRARY TO SECTION 12 OF THE LABOUR RELATIONS ACT.

51. HAVING REGARD TO THE FINDING THAT THE APPLICANT ALREADY HAS BARGAINING RIGHTS FOR THE EMPLOYEES AFFECTED BY THIS APPLICATION, THIS PROCEEDING IS HEREBY TERMINATED.

3007-72-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL 880 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) v. STAR-KIST CARIBE INCORPORATED CANADA DIVISION (RESPONDENT) v. SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION (INTERVENER).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS H. ADE AND P. J. O'KEEFE.

DECISION OF THE BOARD:

JANUARY 8, 1973.

1. THE APPLICANT HAS APPLIED ON DECEMBER 13, 1972 TO BE CERTIFIED FOR CERTAIN EMPLOYEES OF THE RESPONDENT.

2. ON DECEMBER 12, 1972 THE RESPONDENT AND SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION ENTERED INTO AN AGREEMENT IN WRITING WHEREBY THE RESPONDENT VOLUNTARILY AGREED TO RECOGNIZE THE SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION FOR THE UNIT OF EMPLOYEES THAT THE APPLICANT NOW SEEKS TO REPRESENT.

3. SECTION 5 SUBSECTION (3) OF THE ACT READS AS FOLLOWS:

WHERE AN EMPLOYER AND A TRADE UNION AGREE THAT THE EMPLOYER RECOGNIZES THE TRADE UNION AS THE EXCLUSIVE BARGAINING AGENT OF THE EMPLOYEES IN A DEFINED BARGAINING UNIT AND THE AGREEMENT IS IN WRITING SIGNED BY THE PARTIES AND THE PARTIES HAVE NOT ENTERED INTO A COLLECTIVE AGREEMENT AND THE BOARD HAS NOT MADE A DECLARATION UNDER SECTION 52, ANOTHER TRADE UNION MAY, SUBJECT TO SECTION 53, APPLY TO THE BOARD FOR CERTIFICATION AS BARGAINING AGENT OF ANY OF THE EMPLOYEES IN THE BARGAINING UNIT DEFINED IN THE RECOGNITION AGREEMENT ONLY AFTER THE EXPIRATION OF ONE YEAR FROM THE DATE THAT THE RECOGNITION AGREEMENT WAS ENTERED INTO.

4. SINCE THE TIME LIMITS REFERRED TO IN SECTION 5(3) OF THE ACT HAD NOT EXPIRED PRIOR TO THE MAKING OF THE APPLICATION IN THIS MATTER, THE BOARD FINDS THAT THIS APPLICATION IS UNTIMELY.

5. ACCORDINGLY, PURSUANT TO THE PROVISIONS OF SECTION 46 OF THE BOARD'S RULES OF PROCEDURE THE BOARD FINDS THAT THE APPLICANT HAS FAILED TO MAKE A PRIMA FACIE CASE FOR THE REMEDY REQUESTED AND THE BOARD DISMISSES THIS APPLICATION.

1345-71-R: MECHANICAL CONTRACTORS ASSOCIATION OF TORONTO (APPLICANT)  
V. LOCAL 46, THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA (RESPONDENT).

BEFORE: D.E. FRANKS, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND H.J.F. ADE.

APPEARANCES AT THE HEARING: W.S. COOK AND D.M. LEWIS FOR THE APPLICANT; L.C. ARNOLD AND TOM BERRY FOR THE RESPONDENT.

DECISION OF THE BOARD:

JANUARY 9, 1973.

1. THIS IS AN APPLICATION FOR ACCREDITATION IN WHICH THE APPLICANT SEEKS TO BE ACCREDITED AS THE BARGAINING AGENT FOR CERTAIN EMPLOYERS WHO HAVE A BARGAINING RELATIONSHIP WITH THE RESPONDENT IN RESPECT OF CERTAIN OF THEIR EMPLOYEES. THE APPLICANT AND THE RESPONDENT ARE PARTIES TO A COLLECTIVE AGREEMENT DATED JUNE 3, 1971, THE TERM OF WHICH EXTENDS FROM MAY 3, 1971 TO APRIL 30, 1973. THIS AGREEMENT IS BINDING ON MORE THAN ONE EMPLOYER IN THE CONSTRUCTION INDUSTRY. THE BOARD THEREFORE FINDS THAT IT HAS THE JURISDICTION UNDER SECTION 113 OF THE ACT TO ENTERTAIN THIS APPLICATION.

2. THE APPLICANT FILED WITH THIS APPLICATION A DOCUMENT WHICH WAS IDENTIFIED AT THE HEARING AS A COPY OF THE CONSTITUTION OF THE MECHANICAL CONTRACTORS ASSOCIATION OF TORONTO, CURRENTLY IN FORCE. THIS DOCUMENT INDICATES THAT IT WAS ENACTED BY THE ASSOCIATION ON FEBRUARY 10, 1964, AND WAS SUCCESSIVELY AMENDED ON JUNE 23, 1964, MARCH 31, 1966 AND OCTOBER 21, 1970. INCLUDED IN THE OBJECTS OF THE ASSOCIATION AS ARTICLE 3(c) AND ARTICLE 3(j) ARE THE FOLLOWING PROVISIONS:

#### ARTICLE 3(c)

TO REPRESENT ALL MEMBERS AND NON-MEMBERS WHO AUTHORIZE THE ASSOCIATION TO ACT ON THEIR BEHALF IN THE NEGOTIATION, GENERAL APPLICATION AND ADMINISTRATION AND THE INTERPRETATION OF COLLECTIVE AGREEMENTS AND IN THE ARBITRATION OF ANY LABOUR DISPUTES.

#### ARTICLE 3(j)

TO BECOME AN ACCREDITED EMPLOYERS' ORGANIZATION UNDER THE LABOUR RELATIONS ACT AND TO REGULATE THE REGULATIONS BETWEEN EMPLOYERS AND EMPLOYEES IN THE CONSTRUCTION INDUSTRY AND TO REPRESENT SUCH EMPLOYERS IN COLLECTIVE BARGAINING WITH ANY SECTOR OR SECTORS OF THE CONSTRUCTION INDUSTRY IN ANY GEOGRAPHICAL AREA OR AREAS AS DEFINED UNDER THE LABOUR RELATIONS ACT, OR IS DETERMINED BY THE LABOUR RELATIONS BOARD.

THE BOARD IS THEREFORE SATISFIED THAT THE APPLICANT IS AN EMPLOYERS' ORGANIZATION WITHIN THE MEANING OF SECTION 106(d) OF THE LABOUR RELATIONS ACT, AND THAT IT IS A PROPERLY CONSTITUTED EMPLOYERS' ORGANIZATION FOR THE PURPOSES OF SECTION 115(3) OF THE ACT.

3. IN SUPPORT OF ITS APPLICATION, THE APPLICANT FILED DOCUMENTARY EVIDENCE OF REPRESENTATION ON BEHALF OF ONE HUNDRED AND TEN EMPLOYERS. THE EVIDENCE IS ENTITLED "EMPLOYER AUTHORIZATION" AND IN EACH CASE IS SIGNED ON BEHALF OF THE INDIVIDUAL EMPLOYER GIVING SUCH



AUTHORIZATION. THE AUTHORIZATIONS ARE IN A STANDARD FORM AND THE EFFECT OF SUCH AN AUTHORIZATION IS TO APPOINT THE APPLICANT ASSOCIATION TO REPRESENT THE INDIVIDUAL EMPLOYER AS BARGAINING AGENT IN REGARD TO THE EMPLOYEES COVERED BY THE COLLECTIVE AGREEMENT WITH THE RESPONDENT IN THE GEOGRAPHIC AREA AND SECTOR OF THE CONSTRUCTION INDUSTRY WHICH ARE THE SUBJECT OF THIS APPLICATION. THE BOARD IS SATISFIED THAT THE EVIDENCE OF REPRESENTATION MEETS THE REQUIREMENTS SET OUT IN SECTION 96 OF THE BOARD'S RULES OF PROCEDURE, AND THE BOARD IS FURTHER SATISFIED THAT THE INDIVIDUAL EMPLOYERS ON WHOSE BEHALF THE APPLICANT HAS SUBMITTED EVIDENCE OF REPRESENTATION HAVE VESTED APPROPRIATE AUTHORITY IN THE APPLICANT TO ENABLE IT TO DISCHARGE THE RESPONSIBILITIES OF AN ACCREDITED BARGAINING AGENT.

4. THE APPLICANT, IN ITS APPLICATION, SUBMITTED THAT THE APPROPRIATE UNIT OF EMPLOYERS FOR ACCREDITATION IS ALL EMPLOYERS OF PLUMBERS AND PLUMBERS' APPRENTICES, STEAMFITTERS AND STEAMFITTERS' APPRENTICES AND WELDERS, IN A GEOGRAPHIC AREA CORRESPONDING TO THAT IN THE COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT REFERRED TO IN PARAGRAPH 1 SUPRA. THE APPLICANT SET OUT AS THE SECTOR OF THE CONSTRUCTION INDUSTRY APPROPRIATE FOR ACCREDITATION IN THIS APPLICATION, "THE INDUSTRIAL COMMERCIAL AND INSTITUTIONAL, PROPERTY DRAINS". AT THE HEARING IN THIS MATTER THE APPLICANT TOOK THE POSITION THAT THE TERM "PROPERTY DRAINS" IN THE DESCRIPTION OF THE SECTOR OF THE CONSTRUCTION INDUSTRY WAS NOT NECESSARY SINCE THE PROPERTY DRAINS IF THEY RELATED TO THE INDUSTRIAL COMMERCIAL AND INSTITUTIONAL SECTOR THEN THEY WERE PART OF THAT SECTOR. THE RESPONDENT'S CONCERN WITH THIS WAS THE POSSIBLE INFERENCE THAT DELETING THE TERM PROPERTY DRAINS MIGHT BE CONSTRUED AS ABANDONING A CLAIM TO THIS WORK. IN OUR VIEW, THE TERM "PROPERTY DRAINS" DOES NOT DENOTE A DIVISION OF THE CONSTRUCTION INDUSTRY DETERMINED BY WORK CHARACTERISTICS AND CANNOT THEREFORE BE VIEWED AS A SECTOR. WHETHER A PROPERTY DRAIN PROJECT FALLS IN ONE SECTOR ANOTHER WILL HAVE TO BE DECIDED ON THE BASIS OF THE FACTS IN THAT PARTICULAR CASE. ON THE OTHER HAND, INSOFAR AS THESE MAY BE THE SUBJECT OF JURISDICTIONAL DISPUTES, THE ACT PROVIDES A SPECIFIC REMEDY FOR JURISDICTIONAL DISPUTES AND IT IS DIFFICULT TO SEE WHAT BEARING AN ACCREDITATION DECISION CAN HAVE ON THE RESOLUTION OF SUCH DISPUTES. THE BOARD IS THEREFORE OF THE VIEW THAT THE SECTOR OF THE CONSTRUCTION INDUSTRY APPROPRIATE FOR ACCREDITATION IN THIS APPLICATION IS THE INDUSTRIAL, COMMERCIAL AND INSTITUTIONAL SECTOR. THE BOARD THEREFORE FINDS THAT ALL EMPLOYERS OF PLUMBERS, PLUMBERS' APPRENTICES, STEAMFITTERS, STEAMFITTERS' APPRENTICES AND WELDERS FOR WHOM THE RESPONDENT HAS BARGAINING RIGHTS IN THE JUDICIAL DISTRICT OF YORK, THAT PORTION OF ONTARIO COUNTY LYING WEST OF THE PICKERING WHITBY TOWNSHIPS LINE, PEEL COUNTY, THAT PORTION OF HALTON COUNTY LYING SOUTH OF HIGHWAY 401 AND EAST OF THE SEVENTH LINE AND DUFFERIN COUNTY IN THE INDUSTRIAL, COMMERCIAL AND INSTITUTIONAL SECTOR OF THE CONSTRUCTION INDUSTRY, CONSTITUTE A UNIT OF EMPLOYERS APPROPRIATE FOR COLLECTIVE BARGAINING.

12. ON THE BASIS OF ALL THE EVIDENCE BEFORE US THE BOARD FINDS THAT ON THE DATE OF THE MAKING OF THE APPLICATION THE APPLICANT REPRESENTED ONE HUNDRED AND THREE OF THE ONE HUNDRED AND THIRTY-SIX EMPLOYERS ASCERTAINED AS THE NUMBER OF EMPLOYERS UNDER SECTION 115(1)(A) OF THE ACT. THE ONE HUNDRED AND THREE EMPLOYERS SO REPRESENTED IS THE NUMBER OF EMPLOYERS TO BE ASCERTAINED BY THE BOARD UNDER SECTION 115(1)(B) OF THE ACT. ACCORDINGLY, THE BOARD IS SATISFIED THAT A MAJORITY OF THE EMPLOYERS IN THE UNIT OF EMPLOYERS ARE REPRESENTED BY THE APPLICANT.

13. THE ENTITLEMENT OF THE EMPLOYERS' ORGANIZATION TO ACCREDITATION IS BASED ON A "DOUBLE MAJORITY". WE HAVE NOW DEALT WITH THE FIRST OF THE MAJORITIES THAT AN APPLICANT MUST OBTAIN, A MAJORITY OF EMPLOYERS IN THE UNIT OF EMPLOYERS. WE NOW TURN TO DETERMINE WHETHER THOSE EMPLOYERS EMPLOYED A MAJORITY OF THE EMPLOYEES AFFECTED BY THIS APPLICATION. THE SCHEDULE "H" WHICH ACCOMPANIED THE FORM 68, EMPLOYER INTERVENTION, FILED BY THE INDIVIDUAL EMPLOYERS SETS OUT THE NUMBER OF EMPLOYEES THAT THE EMPLOYER INTERVENER HAS AT EACH JOB SITE WITH DETAILS OF THE LOCATION AND THE TYPE OF CONSTRUCTION INVOLVED. BY SECTION 115(1)(C) THE RELEVANT PAYROLL PERIOD IS THE WEEKLY PAYROLL PERIOD IMMEDIATELY PRECEDING THE MAKING OF THE APPLICATION, IN THIS CASE THE WEEKLY PAYROLL PERIOD IMMEDIATELY PRECEDING DECEMBER 3, 1971. FOR THOSE EMPLOYERS WHO HAVE FILED A FORM 68 AND ITS ACCOMPANYING SCHEDULE "H" THE BOARD IS SATISFIED THAT SUCH A PERIOD IS SATISFACTORY FOR THE DETERMINATION IN SECTION 115(1)(C).

. . .

15. ON THE BASIS OF ALL THE EVIDENCE BEFORE IT AND IN ACCORDANCE WITH THE FOREGOING CONSIDERATIONS THE BOARD FINDS THAT THERE WERE ONE THOUSAND, FIVE HUNDRED AND THIRTY-THREE EMPLOYEES AFFECTED BY THE APPLICATION. THE ONE THOUSAND, FIVE HUNDRED AND THIRTY-THREE EMPLOYEES IS THE NUMBER OF EMPLOYEES TO BE ASCERTAINED BY THE BOARD UNDER SECTION 115(1)(C) OF THE ACT.

16. THE BOARD FURTHER FINDS THAT THE ONE HUNDRED AND THREE EMPLOYERS REPRESENTED BY THE APPLICANT EMPLOYED ONE THOUSAND, FOUR HUNDRED AND TWENTY-SEVEN OF THESE EMPLOYEES. THE BOARD IS THEREFORE SATISFIED THAT THE MAJORITY OF EMPLOYERS REPRESENTED BY THE APPLICANT EMPLOYED A MAJORITY OF THE EMPLOYEES AS ASCERTAINED IN ACCORDANCE WITH THE PROVISIONS OF SECTION 115(1)(C).

17. HAVING REGARD TO ALL THE ABOVE FINDINGS A CERTIFICATE OF ACCREDITATION WILL ISSUE TO THE APPLICANT FOR THE UNIT OF EMPLOYERS FOUND TO BE AN APPROPRIATE UNIT OF EMPLOYERS IN PARAGRAPH 4 AND IN ACCORDANCE WITH THE PROVISIONS OF SECTION 115(2) OF THE ACT, FOR SUCH OTHER EMPLOYERS FOR WHOSE EMPLOYEES THE RESPONDENT MAY AFTER DECEMBER 3, 1971, OBTAIN BARGAINING RIGHTS THROUGH CERTIFICATION OR VOLUNTARY RECOGNITION IN THE GEOGRAPHIC AREA AND SECTOR SET OUT IN THE UNIT OF EMPLOYERS.

2753-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA (APPLICANT)  
V. WHITNEY MAINTENANCE LIMITED (RESPONDENT).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS H. J. F. ADE  
 AND E. BOYER.

APPEARANCES AT THE HEARING: A. M. MINSKY AND JOHN VELLA APPEARING FOR  
 THE APPLICANT AND B.W. BINNING AND G.A. BECIGNEUL APPEARING FOR THE  
 RESPONDENT.

DECISION OF THE BOARD:

JANUARY 12, 1973.

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3. IN PARAGRAPH 13 OF ITS REPLY THE RESPONDENT STATED:

PRIOR TO THE APPLICATION FOR CERTIFICATION  
 REPRESENTATIVES OF THE RESPONDENT MET WITH  
 REPRESENTATIVES OF THE APPLICANT AND REACHED  
 AN AGREEMENT TO PAY THE PERSONS NAMED IN  
 SCHEDULE A CERTAIN RATES OF WAGES ON AGREE-  
 MENT THAT THE APPLICANT WOULD NOT REQUIRE  
 THE SIGNING OF A COLLECTIVE AGREEMENT AND ON  
 THE UNDERSTANDING THAT NO APPLICATION FOR  
 CERTIFICATION WOULD BE FILED.

4. THE BOARD HAS CONSIDERED THE REPRESENTATIONS OF THE PARTIES.  
 ASSUMING, WITHOUT DECIDING, THAT THE ALLEGATIONS SET FORTH IN PARAGRAPH  
 13 OF THE REPLY ARE TRUE, IT IS THE VIEW OF THE BOARD THAT THE PARTIES  
 ARE NOT COMPETENT BY PRIVATE AGREEMENT TO CONTRACT OUT OF THE PROVISIONS  
 OF THE LABOUR RELATIONS ACT. ACCORDINGLY, THE FACTS ALLEGED IN PARA-  
 GRAPH 13 OF THE REPLY, EVEN IF ESTABLISHED, DO NOT CONSTITUTE A BAR TO  
 THIS APPLICATION FOR CERTIFICATION.

5. THE RESPONDENT, IN A LETTER TO THE BOARD DATED NOVEMBER 9,  
 1972, HAS ALSO ALLEGED THAT ALL OR A MAJORITY OF THE EMPLOYEES IN THE  
 BARGAINING UNIT DID NOT PAY THE REQUIRED ONE DOLLAR WHEN THEY SIGNED  
 APPLICATIONS FOR MEMBERSHIP IN THE APPLICANT. IN THIS LETTER, THE  
 RESPONDENT ALSO ALLEGED THAT SUCH EMPLOYEES ONLY PAID ONE DOLLAR FOL-  
 LOWING A MEETING WITH THE APPLICANT WHEN THE APPLICANT ADVISED THE EM-  
 PLOYEES THEY WOULD LOSE THEIR JOBS IF THEY DID NOT SUPPORT THE APPLI-  
 CANT. ON THE BASIS OF THESE ALLEGATIONS THE RESPONDENT ALLEGES THAT  
 THE DECLARATION IN SUPPORT OF THE EVIDENCE OF MEMBERSHIP IS IN ERROR  
 AND THAT THIS APPLICATION OUGHT TO BE DISMISSED.

6. AT THE HEARING, THE RESPONDENT ALSO ALLEGED (AND SOUGHT TO  
 INTRODUCE EVIDENCE ON THIS ALLEGATION) THAT IT HAD CONTRIBUTED SUPPORT  
 TO THE APPLICANT CONTRARY TO SECTION 12 OF THE LABOUR RELATIONS ACT.  
 THE RESPONDENT ADOPTED THE POSITION THAT IN THESE CIRCUMSTANCES, SEC-  
 TION 12 OF THE LABOUR RELATIONS ACT PROHIBITED THE BOARD FROM CERTIFY-  
 ING THE APPLICANT.



7. THE APPLICANT ARGUED THAT THE RESPONDENT COULD NOT IMPUGN CONDUCT TO WHICH IT HAS BEEN A PARTY.

8. IT IS THE DECISION OF THE BOARD THAT THE EVIDENCE WHICH THE RESPONDENT SEEKS TO ADDUCE BEFORE THE BOARD IN CONNECTION WITH ITS ALLEGATIONS CONCERNING SECTION 12 OF THE LABOUR RELATIONS ACT SHOULD NOT BE ADMITTED. IT IS THE VIEW OF THE BOARD THAT IT DOES NOT LIE IN THE MOUTH OF THE RESPONDENT TO ADDUCE EVIDENCE OF ITS OWN WRONG-DOING IN THE CIRCUMSTANCES OF THIS APPLICATION. THE BOARD DISTINGUISHES THE CIRCUMSTANCES OF THIS APPLICATION FROM A SITUATION WHERE, FOR EXAMPLE, ANOTHER TRADE UNION OR INDIVIDUAL EMPLOYEE SEEKS TO ADDUCE EVIDENCE OF EVENTS TO WHICH HE WAS NOT A PARTY. IN REFUSING TO HEAR THE PROFFERED EVIDENCE, THE BOARD RELIES ON THE GENERAL RULE AGAINST THE RECEPTION OF EVIDENCE BY WHICH A PARTY ATTEMPTS TO TAKE ADVANTAGE OF ITS OWN WRONG-DOING. ON THIS POINT REFERENCE MAY BE MADE TO THE DAY SIGN COMPANY, LIMITED CASE, [1966] OLRB REP. P. 274.

9. THE APPLICANT AND THE RESPONDENT REQUESTED THE BOARD TO MAKE ITS USUAL INQUIRIES INTO THE RESPONDENT'S ALLEGATIONS REGARDING THE CIRCUMSTANCES OF THE PAYMENT OF ONE DOLLAR BY THE PERSONS WHO JOINED THE APPLICANT. THE BOARD NOTES THAT THE RESPONDENT IS NOT ALLEGING THAT THE PERSONS WHO BECAME MEMBERS OF THE APPLICANT NEVER PAID ONE DOLLAR ON THEIR OWN BEHALF, BUT IS RATHER ALLEGING "LATE" PAYMENT OF SUCH MONEY.

10. IN THESE CIRCUMSTANCES, IT IS THE DECISION OF THE BOARD THAT THE RESPONDENT OUGHT TO HAVE THE CARRIAGE OF PROCEEDING TO ADDUCE EVIDENCE ON ITS ALLEGATIONS CONCERNING THE MONEY PAYMENT WITHOUT A PRELIMINARY INVESTIGATION BY THE BOARD.

11. THE REGISTRAR IS DIRECTED TO LIST THIS MATTER FOR CONTINUATION OF HEARING.

2730-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) v. DELPHIS COTE LIMITED (RESPONDENT) v. SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL #47 (INTERVENER).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS H. J. F. ADE AND E. BOYER.

APPEARANCES AT THE HEARING: B. CHERCOVER AND F. MANONI FOR THE APPLICANT; NO ONE APPEARING FOR THE RESPONDENT; RONALD S. TAYLOR AND RAYMOND GUERTIN FOR THE INTERVENER.

DECISION OF THE BOARD: JANUARY 15, 1973.

1. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.

2. THE BOARD FURTHER FINDS THAT THIS IS AN APPLICATION FOR CER-

TIFICATION WITHIN THE MEANING OF SECTION 108 OF THE LABOUR RELATIONS ACT.

3. THE BOARD HAS CONSIDERED THE REPORT OF THE EXAMINER DATED DECEMBER 15, 1972 TOGETHER WITH THE REPRESENTATIONS OF THE PARTIES THEREON.

4. THE APPLICANT IS APPLYING FOR CERTIFICATION FOR A BARGAINING UNIT OF ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN BOARD GEOGRAPHIC AREA 15, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN.

5. THE INTERVENER ADOPTED THE POSITION THAT THE EMPLOYEES AFFECTED BY THIS APPLICATION ARE ALREADY COVERED BY A COLLECTIVE AGREEMENT BETWEEN THE INTERVENER AND THE RESPONDENT DATED NOVEMBER 1, 1971. THE APPLICANT SUBMITS THAT THE EMPLOYEES AFFECTED BY THIS APPLICATION ARE CONSTRUCTION LABOURERS.

6. HAVING REGARD TO THE EVIDENCE BEFORE THE BOARD AND TO THE REPRESENTATIONS OF THE PARTIES, THE BOARD FINDS THAT THE EMPLOYEES AFFECTED BY THIS APPLICATION ARE ROOFING PERSONNEL AND ARE NOT CONSTRUCTION LABOURERS.

7. HAVING REGARD TO THE FACT THAT THERE WERE NO CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT ON THE DATE OF THE MAKING OF THIS APPLICATION, IT FOLLOWS THAT HAVING REGARD TO THE PROVISIONS OF SECTION 6(1) OF THE LABOUR RELATIONS ACT THAT THERE IS NOT AN APPROPRIATE BARGAINING UNIT AS SUGGESTED BY THE APPLICANT.

8. IN THE RESULT, THIS APPLICATION IS DISMISSED.

2834-72-R: LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, S.E.I.U., AFL-CIO-CLC (APPLICANT) V. KOMOKA NURSING HOMES LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: A. CAMPBELL FOR THE APPLICANT; SAMUEL LERNER FOR THE RESPONDENT.

DECISION OF THE BOARD: JANUARY 15, 1973.

1. THIS IS AN APPLICATION FOR CERTIFICATION IN WHICH THE BOARD DIRECTED THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN. ON THE TAKING OF THE PRE-HEARING REPRESENTATION VOTE, OF THE 35 EMPLOYEES WHOSE NAMES APPEARED ON THE REVISED VOTERS' LIST 34 BALLOTS WERE CAST. NINETEEN OF THE EMPLOYEES VOTED IN FAVOUR OF THE APPLICANT AND FIFTEEN VOTED AGAINST THE APPLICANT.

2. FOLLOWING THE TAKING OF THE PRE-HEARING REPRESENTATION VOTE THE RESPONDENT MADE CERTAIN ALLEGATIONS WITH RESPECT TO THE CONDUCT OF THE VOTE. AT THE HEARING IN THIS MATTER THE RESPONDENT ADDUCED EVIDENCE THAT MR. ZECCA, ONE OF THE RESPONDENT'S EMPLOYEES WHO RESIDES AT THE RESPONDENT'S PREMISES AT RURAL ROUTE No. 3, KOMOKA, RECEIVED A PAMPHLET WHICH HAD BEEN MAILED TO HIM BY THE APPLICANT AFTER THE ONSET OF THE QUIET PERIOD IN THIS MATTER. THE APPLICANT HAD MAILED PAMPHLETS TO ALL OF THE RESPONDENT'S EMPLOYEES PRIOR TO 2:30 P.M. ON THURSDAY, NOVEMBER 30, 1972 AT THE MAIN POST OFFICE IN LONDON. PRIOR TO MAILING THE PAMPHLETS THE APPLICANT WAS ASSURED BY THE POSTAL AUTHORITIES THAT SINCE THE PAMPHLETS WERE MAILED FIRST CLASS MAIL THEY WOULD BE DELIVERED THE FOLLOWING DAY, FRIDAY, DECEMBER 1. THE EVIDENCE FURTHER ESTABLISHED THAT RURAL ROUTE No. 3, KOMOKA WAS SERVICED BY MAIL ON SATURDAY, DECEMBER 2.

3. THE QUIET PERIOD FOR THE TAKING OF THE REPRESENTATION VOTE COMMENCED AT MIDNIGHT ON SATURDAY, DECEMBER 2 AND THE VOTE WAS HELD ON WEDNESDAY, DECEMBER 6.

4. MR. ZECCA TESTIFIED THAT HE RECEIVED THE PROPAGANDA LITERATURE FROM THE APPLICANT FROM THE RESPONDENT'S OFFICE ON TUESDAY, DECEMBER 5. MR. ZECCA KNEW OF NO OTHER INSTANCE WHERE OTHER EMPLOYEES HAD RECEIVED SUCH DOCUMENT AFTER DECEMBER 2. THE RESPONDENT CALLED NO EVIDENCE AS TO WHEN THE ENVELOPE CONTAINING THE PROPAGANDA ARRIVED AT THE RESPONDENT'S PREMISES.

5. HAVING CONSIDERED ALL THE EVIDENCE, WE FIND THAT SINCE THE APPLICANT HAD RECEIVED ASSURANCES THAT FIRST CLASS MAIL MAILED AT THE POST OFFICE ON THURSDAY, NOVEMBER 30 WOULD BE DELIVERED THE FOLLOWING DAY AND ESPECIALLY SINCE THE POSTAL AUTHORITIES HAD TWO DAYS TO DELIVER MAIL TO RURAL ROUTE No. 3, KOMOKA PRIOR TO THE ONSET OF THE QUIET PERIOD, THAT THIS CASE APPEARS TO FALL WITHIN THE PRINCIPLES ESTABLISHED BY THE BOARD IN THE ADDRESSOGRAPH-MULTIGRAPH OF CANADA LIMITED CASE, OLRB MONTHLY REPORT, OCTOBER 1968, P. 752; KRALINATOR FILTERS LIMITED CASE, OLRB MONTHLY REPORT, AUGUST 1966, P. 312; AND WATERLOO COUNTY HEALTH ASSOCIATION CASE, OLRB MONTHLY REPORT, MAY 1965, P. 121. ACCORDINGLY, WE FIND THAT THE APPLICANT TOOK REASONABLE STEPS TO ENSURE THAT THE MAILING OF ITS PROPAGANDA WOULD NOT CONTRAVENE THE REGISTRAR'S DIRECTION WITH RESPECT TO THE QUIET PERIOD. SINCE THE CASE OF MR. ZECCA APPEARS TO BE AN ISOLATED INSTANCE OF AN EMPLOYEE RECEIVING THE PROPAGANDA AFTER THE ONSET OF THE QUIET PERIOD, PERHAPS THROUGH NO FAULT OF THE APPLICANT SINCE THERE WAS NO EVIDENCE AS TO WHEN THE MAIL WAS DELIVERED TO THE RESPONDENT'S PREMISES, WE FIND THAT THE DELIVERY OF THE MATERIAL TO MR. ZECCA ON DECEMBER 5 IS NOT SUFFICIENT REASON TO CAUSE THE BOARD TO DISREGARD THE RESULTS OF THE REPRESENTATION VOTE IN THIS MATTER.

6. THE RESPONDENT ALSO CALLED EVIDENCE THAT ONE OF ITS EMPLOYEES ADVISED MR. SIM, AN EMPLOYEE OF THE RESPONDENT IN THE VOTING CONSTITUENCY, THAT SHE DID NOT THINK THAT HE WAS ELIGIBLE TO VOTE BECAUSE HE



HAD ONLY RECENTLY BEEN HIRED BY THE RESPONDENT. THE FACT WAS THAT MR. SIM WAS AN EMPLOYEE OF THE RESPONDENT INCLUDED IN THE VOTING CONSTITUENCY AND WAS ELIGIBLE TO VOTE. THE EMPLOYEE WHO ADVISED MR. SIM OF HER OPINION TESTIFIED THAT SHE HAD BEEN ADVISED BY MR. CAMPBELL, A REPRESENTATIVE OF THE APPLICANT, THAT MR. SIM WOULD NOT BE ELIGIBLE TO VOTE. THE EMPLOYEE WHO SPOKE TO MR. SIM CONCERNING HIS ELIGIBILITY TO VOTE WAS NOT AN OFFICIAL OF THE APPLICANT NOR DID SHE ACTIVELY PARTICIPATE IN THE APPLICANT'S CAMPAIGN TO ORGANIZE THE RESPONDENT'S EMPLOYEES. AGAIN, SHE DID NOT ADVISE MR. SIM THAT MR. CAMPBELL HAD INFORMED HER THAT HE DID NOT BELIEVE MR. SIM TO BE ON THE VOTERS' LIST. MR. SIM DID NOT CAST A BALLOT IN THE PRE-HEARING REPRESENTATION VOTE. HOWEVER, THE RESPONDENT CALLED NO EVIDENCE AS TO WHY MR. SIM FAILED TO VOTE. THE RESPONDENT ALSO CALLED NO EVIDENCE AS TO WHETHER OR NOT MR. SIM HAD MADE OTHER INQUIRIES AS TO HIS ELIGIBILITY TO VOTE.

7. EVEN IF WE WERE TO CONSTRUE THE STATEMENT MADE BY THE RANK-AND-FILE EMPLOYEE TO MR. SIM AS BEING MADE BY AND ON BEHALF OF THE APPLICANT, IT IS NOTED THAT MR. SIM'S BALLOT COULD NOT MATERIALLY AFFECT THE RESULT OF THE VOTE NO MATTER HOW HE VOTED. ACCORDINGLY, WE FIND THAT EVEN IF THE APPLICANT IS RESPONSIBLE FOR MR. SIM'S FAILURE TO VOTE, THE FACT THAT HE DID NOT VOTE IN THE CIRCUMSTANCES SET OUT ABOVE DID NOT AFFECT THE RESULT OF THE VOTE AND ACCORDINGLY IS NOT SUFFICIENT REASON TO CAUSE THE BOARD TO SET ASIDE THE PRE-HEARING REPRESENTATION VOTE IN THIS MATTER.

8. WE THEREFORE FIND THAT NONE OF THE EVIDENCE CALLED BY THE RESPONDENT IN SUPPORT OF ITS ALLEGATIONS IS SUFFICIENT TO CAUSE THE BOARD TO DISREGARD THE WISHES OF THE EMPLOYEES AS EXPRESSED IN THE REPRESENTATION VOTE IN THIS MATTER.

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12. ON THE TAKING OF THE PRE-HEARING REPRESENTATION VOTE DIRECTED BY THE BOARD MORE THAN FIFTY PER CENT OF THE BALLOTS CAST WERE CAST IN FAVOUR OF THE APPLICANT.

13. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

14. THE REGISTRAR WILL DESTROY THE BALLOTS CAST IN THE PRE-HEARING REPRESENTATION VOTE TAKEN IN THIS MATTER FOLLOWING THE EXPIRATION OF 30 DAYS FROM THE DATE OF THIS DECISION UNLESS A STATEMENT REQUESTING THAT THE BALLOTS SHOULD NOT BE DESTROYED IS RECEIVED BY THE BOARD FROM ONE OF THE PARTIES BEFORE THE EXPIRATION OF SUCH 30 DAY PERIOD.

2778-72-M: UNITED GLASS AND CERAMIC WORKERS OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) v. DOMINION GLASS COMPANY LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS H. ADE AND E. BOYER.

APPEARANCES AT THE HEARING: JEFFREY SACK FOR THE APPLICANT; F. G. HAMILTON, G. SHAMANSKY AND J. CHALLONER FOR THE RESPONDENT.

DECISION OF THE BOARD:

JANUARY 15, 1973.

1. THIS IS AN APPLICATION UNDER SECTION 95(2) OF THE LABOUR RELATIONS ACT WHEREIN THE BOARD BY ITS DECISION DATED NOVEMBER 15, 1972 TERMINATED THE APPLICATION FOR THE REASONS THEREIN SET OUT IN VIEW OF THE FACT THAT THE APPLICANT HAD SUBMITTED THE REAL ISSUE IN DISPUTE TO A BOARD OF ARBITRATION.

2. THE APPLICANT BY LETTER DATED NOVEMBER 29, 1972 REQUESTED THE BOARD TO RECONSIDER ITS DECISION. THE BOARD ACCORDINGLY LISTED THIS MATTER FOR HEARING TO CONSIDER THE ISSUES RAISED BY THE APPLICANT IN ITS LETTER OF NOVEMBER 29 IN THIS MATTER.

3. HAVING CONSIDERED THE REPRESENTATIONS OF THE PARTIES AT THE HEARING IN THIS MATTER, THE BOARD IS OF THE VIEW THAT IT MISDIRECTED ITSELF IN ITS DECISION OF NOVEMBER 15, 1972 AND ACCORDINGLY THAT DECISION IS HEREBY REVOKED. THE FACTS OF THIS CASE ARE CLEARLY DISTINGUISHABLE FROM THE FACTS IN THE DOUGLAS AIRCRAFT COMPANY OF CANADA LTD. CASE, BOARD FILE 2341-72-M, DECISION DATED NOVEMBER 2, 1972, WHICH WAS RELIED UPON BY THIS BOARD IN ITS DECISION OF NOVEMBER 15, 1972. IN THE DOUGLAS AIRCRAFT CASE THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES SPECIFICALLY REQUIRED THE PARTIES TO RESOLVE DISPUTES CONCERNING THE INCLUSION OF PERSONS IN THE BARGAINING UNIT BY MEANS OF THE GRIEVANCE AND ARBITRATION PROCEDURES SET OUT IN THE COLLECTIVE AGREEMENT. THERE IS NO SIMILAR PROVISION IN THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES IN THIS MATTER.

4. SECTION 95(2) OF THE ACT PERMITS A PARTY TO APPLY FOR A DETERMINATION AS TO WHETHER A PERSON IS AN EMPLOYEE NOT ONLY DURING THE COURSE OF BARGAINING FOR A COLLECTIVE AGREEMENT BUT ALSO "DURING THE PERIOD OF OPERATION OF A COLLECTIVE AGREEMENT". A DETERMINATION TO BE MADE BY THE BOARD UNDER SECTION 95(2) IS SOLELY FOR THE PURPOSE OF DECIDING WHETHER A PERSON IS AN EMPLOYEE FOR THE PURPOSES OF THE ACT. THE REAL ISSUE BETWEEN THE PARTIES IN THIS CASE IS WHETHER THE PERSONS IN DISPUTE ARE EMPLOYEES COVERED BY THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES. EVEN THOUGH A DETERMINATION UNDER SECTION 95(2) MIGHT BE PRELIMINARY TO THE ISSUE WHETHER PERSONS ARE INCLUDED IN THE BARGAINING UNIT COVERED BY THE COLLECTIVE AGREEMENT, A DETERMINATION UNDER SECTION 95(2) DOES NOT NECESSARILY RESOLVE THAT ISSUE. AS NOTED IN THE BOARD'S DECISION OF NOVEMBER 15, THE COURT HAS DECIDED IN RE CANADIAN INDUSTRIES LTD. AND INTERNATIONAL UNION OF DISTRICT 50, ALLIED AND TECHNICAL WORKERS OF UNITED STATES AND CANADA, LOCAL 13328 CASE [1972] 3 O.R. 63 THAT AN ARBITRATOR HAS THE NECESSARY JURISDICTION TO DECIDE THE ISSUE BETWEEN THE PARTIES IN THIS MATTER. HOWEVER THAT MAY BE, THIS BOARD ALSO HAS THE NECESSARY JURISDICTION TO MAKE A DETERMINATION UNDER SECTION 95(2).

5. A QUESTION ARISES AS TO WHETHER OR NOT A PARTY MAY PROCEED TO ARBITRATION CONCERNING THE INCLUSION OF PERSONS IN A BARGAINING UNIT COVERED BY A COLLECTIVE AGREEMENT AND AT THE SAME TIME ASK THIS BOARD FOR RELIEF UNDER SECTION 95(2) OF THE ACT. IT WAS THE RESPONDENT'S POSITION THAT SUCH LATTER PROCEDURE WAS REDUNDANT AND WAS EVEN MORE SO IN THIS INSTANCE SINCE THE RESPONDENT INTENDED TO ARGUE AT THE ARBITRATION HEARING THAT, BECAUSE OF THE LONG PERIOD WHICH HAD ELAPSED DURING WHICH THE PERSONS IN DISPUTE WERE EXCLUDED BY THE COLLECTIVE AGREEMENTS BETWEEN THE PARTIES, THE APPLICANT WAS THEREBY ESTOPPED FROM SEEKING THE RELIEF IT REQUESTED.

6. NO DISTINCTION CAN REASONABLY BE MADE BETWEEN THE CASE WHERE A PARTY HAS LAUNCHED THE ARBITRATION PROCEDURE PRIOR TO SEEKING RELIEF UNDER SECTION 95(2) AND THE CASE WHERE RELIEF IS OBTAINED UNDER SECTION 95(2) BEFORE THE ARBITRATION PROCEDURE IS EMBARKED ON. IT MAY BE THAT IN SOME CASES, BECAUSE OF THE TIME LIMITS CONTAINED IN A COLLECTIVE AGREEMENT, IT IS NECESSARY FOR THE PARTY TO TAKE THE NECESSARY STEPS TO PROCEED TO ARBITRATION BEFORE IT HAS AN OPPORTUNITY TO BRING AN APPLICATION FOR RELIEF UNDER SECTION 95(2) OF THE ACT.

7. THIS BOARD'S JURISDICTION UNDER SECTION 95(2) IS IN NO WAY CURTAILED BECAUSE OF THE ISSUES WHICH MAY ARISE BETWEEN THE PARTIES AT THE ARBITRATION HEARING. SO LONG AS A QUESTION HAS ARISEN BETWEEN THE PARTIES WITHIN THE MEANING OF SECTION 95(2) OF THE ACT, AS IS THE SITUATION IN THE INSTANT CASE, "THE QUESTION MAY BE REFERRED TO THE BOARD". THE PROVISIONS OF SECTION 95(2) ARE THEREFORE PERMISSIVE AND ACCORDINGLY SO LONG AS THE QUESTION HAS ARISEN DURING THE COURSE OF BARGAINING OR DURING THE PERIOD OF OPERATION OF THE COLLECTIVE AGREEMENT, A PARTY MAY SEEK THE RELIEF AFFORDED BY SECTION 95(2). AS THE BOARD HAS STATED MANY TIMES, SO LONG AS THE DETERMINATION WILL SERVE A USEFUL PURPOSE THE BOARD OUGHT NOT TO REFUSE TO EXERCISE ITS JURISDICTION UNDER SECTION 95(2) OF THE ACT. (SEE CITY OF ST. CATHARINES CASE, OLRB MONTHLY REPORT, JULY 1966, P. 270; ALGOMA STEEL CORPORATION LIMITED CASE, OLRB MONTHLY REPORT, DECEMBER 1966, P. 722; AND DUNLOP CANADA LIMITED (WHITBY) CASE, OLRB MONTHLY REPORT, APRIL 1967, P. 95.

8. EVEN THOUGH THE BOARD OF ARBITRATION MIGHT BE ABLE TO RESOLVE THE DISPUTE BETWEEN THE PARTIES WITHOUT THE ASSISTANCE OF THE BOARD, WE ARE OF THE VIEW THAT, BECAUSE OF THE BOARD'S PROCEDURES OF OBTAINING THE EVIDENCE WITH THE ASSISTANCE OF AN EXAMINER AND ESPECIALLY BECAUSE OF THE AVAILABILITY OF EXAMINERS FOR SCHEDULING HEARINGS AS OPPOSED TO THE AVAILABILITY OF ARBITRATORS FOR THIS PURPOSE, AND BECAUSE OF THE SIGNIFICANT REDUCTION IN EXPENSE TO THE PARTIES AS A RESULT OF THE PROCEDURES BEFORE THIS BOARD, SUCH FACTORS MUST BE CONSIDERED TO BE TO THE ADVANTAGE OF BOTH PARTIES IN RESOLVING DISPUTES OF THIS NATURE. IT IS ALSO NOTED THAT ALTHOUGH PARTIES SHARE AN ADVANTAGE IN PROCEDURES OF THIS NATURE BEFORE THIS BOARD DUE TO THE FACT THAT PERSONS IN DISPUTE ARE CALLED AS WITNESSES BY THE EXAMINER AND MAY BE CROSS-EXAMINED BY BOTH PARTIES, SUCH IS NOT THE CASE AT AN ARBITRATION HEARING WHERE A PARTY CALLING A WITNESS IS NOT PERMITTED TO



CROSS-EXAMINE THAT WITNESS. WHILE IT MAY BE THAT IN THE INSTANT CASE THE APPLICANT MIGHT BENEFIT MOST BY THE BOARD'S PROCEDURES, APPLICATIONS UNDER SECTION 95(2) OF THE ACT ARE BROUGHT NOT ONLY BY TRADE UNIONS BUT IN MANY INSTANCES ARE ALSO BROUGHT BY EMPLOYERS. THE APPLICANT ALSO ARGUED THAT BECAUSE OF THE BOARD'S VAST EXPERIENCE IN DEALING WITH INCLUSIONS AND EXCLUSIONS FROM BARGAINING UNITS, WHICH EXPERIENCE MAY NOT BE SHARED BY SOME ARBITRATORS, IS ALSO AN IMPORTANT CONSIDERATION IN THIS MATTER. IT MAY WELL BE THAT IF THE APPLICANT IS CORRECT IN ITS ASSURANCES THAT THE PARTIES CAN EXPECT A GREATER DEGREE OF UNIFORMITY BY HAVING DETERMINATIONS MADE UNDER SECTION 95(2) OF THE ACT BY THIS BOARD RATHER THAN BY HAVING AD HOC ARBITRATORS DETERMINE WHETHER A PERSON OUGHT TO BE EXCLUDED FROM A BARGAINING UNIT BECAUSE OF HIS MANAGERIAL FUNCTIONS.

9. AGAIN, THE ISSUE UNDER SECTION 95(2) OF THE ACT IS A VERY RESTRICTED ISSUE, I.E. A DETERMINATION WHETHER A DISPUTED PERSON IS AN EMPLOYEE FOR THE PURPOSE OF THE ACT. WHILE THIS ISSUE MAY BE INCLUDED IN THE REAL ISSUE BETWEEN THE PARTIES AS TO WHETHER SUCH PERSONS ARE EMPLOYEES COVERED BY THE COLLECTIVE AGREEMENT, THE BOARD'S DETERMINATION OF THE QUESTION RAISED UNDER SECTION 95(2), IF NOT DISPOSITIVE OF THE ISSUE BETWEEN THE PARTIES, MOST CERTAINLY WOULD BE PRELIMINARY TO THE ISSUE TO BE DETERMINED BY THE ARBITRATOR. IT IS NOTED THAT THE ARBITRATION PROCEEDINGS BETWEEN THE PARTIES HAVE BEEN ADJOURNED UNTIL SUCH TIME AS THIS CASE HAS BEEN DISPOSED OF. THIS WOULD APPEAR TO BE THE PROPER PROCEDURE AND IS THE PROCEDURE FOLLOWED BY OTHER BOARDS OF ARBITRATION. SEE INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA AND PEPSI-COLA CANADA LTD. CASE, INTERIM AWARD DECEMBER 18, 1972, WHEREIN THE BOARD OF ARBITRATION STATED AS FOLLOWS:

IT IS CLEAR THAT THIS BOARD OF ARBITRATION HAS THE NECESSARY JURISDICTION TO MAKE A DETERMINATION UNDER THE PROVISIONS OF THE COLLECTIVE AGREEMENT CONCERNING THE ISSUE WHETHER PERSONS OCCUPYING THE DISPUTED CLASSIFICATION ARE EMPLOYEES OF THE COMPANY FOR THE PURPOSES OF THE COLLECTIVE AGREEMENT AND IN SUPPORT OF OUR VIEWS IN THIS MATTER, WE RELY UPON THE DECISION OF THE COURT OF APPEAL IN RE CANADIAN INDUSTRIES LTD. AND INTERNATIONAL UNION OF DISTRICT 50, ALLIED AND TECHNICAL WORKERS OF UNITED STATES AND CANADA, LOCAL 13328 CASE [1972] 3 O.R.

63. HOWEVER THAT MAY BE, SINCE THE UNION HAS ELECTED TO HAVE A DETERMINATION MADE BY THE OLRB WITH RESPECT TO THE STATUS OF THE PERSONS OCCUPYING THE DISPUTED CLASSIFICATION, WE ARE OF THE VIEW THAT THIS BOARD OUGHT NOT MAKE A DECISION ON THE SAME ISSUE AS THE OLRB HAS BEEN ASKED TO DECIDE. THE DECISION OF THE OLRB MAY BE DISPOSITIVE OF THE DISPUTE BETWEEN THE PARTIES AND EVEN IF THE DECISION DOES NOT RESOLVE THE DISPUTE IT WILL BE PRELIMINARY TO THE ISSUE

WHICH THIS BOARD OF ARBITRATION HAS BEEN ASKED TO  
DECIDE SINCE IT IS ONE OF THE MAIN ISSUES BETWEEN  
THE PARTIES IN THE GRIEVANCE IN THIS MATTER.

10. FOR THE FOREGOING REASONS, THE BOARD IS OF THE VIEW THAT THE  
APPLICANT IS ENTITLED TO THE RELIEF IT SEEKS UNDER SECTION 95(2) IN  
THIS MATTER.

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2785-72-R: TORONTO TYPOGRAPHICAL UNION, LOCAL 91 (APPLICANT) V. RON-  
ALDS-FEDERATED LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS J. D.  
BELL AND E. BOYER.

APPEARANCES AT THE HEARING: JAMES BULLER AND BALFOUR MACKENZIE FOR THE  
APPLICANT; C. G. RIGGS, R. KENNDY AND JEAN MERRILL FOR THE RESPONDENT.

DECISION OF THE BOARD: JANUARY 16, 1973.

1. THIS IS AN APPLICATION FOR CERTIFICATION WHEREIN THE APPLICANT  
REQUESTED THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN.

2. FOLLOWING THE TAKING OF THE PRE-HEARING REPRESENTATION VOTE  
THE APPLICANT, BY LETTER DATED DECEMBER 5, 1972, MADE CERTAIN ALLEGA-  
TIONS AGAINST THE RESPONDENT AND ASKED THAT THE PRE-HEARING REPRESEN-  
TATION VOTE BE SET ASIDE. AT THE HEARING IN THIS MATTER THE EVIDENCE  
CALLED BY THE APPLICANT FAILED TO SUBSTANTIATE THE ALLEGATIONS MADE BY  
THE APPLICANT IN ITS LETTER OF DECEMBER 5, 1972 IN THIS MATTER. THE  
APPLICANT REQUESTED THE BOARD TO APPOINT AN EXAMINER TO INQUIRE INTO  
THE ALLEGATIONS MADE BY IT.

3. HAVING CONSIDERED THE EVIDENCE IN THIS MATTER AND THE REP-  
RESENTATIONS OF THE PARTIES, THE BOARD FINDS THAT THE APPLICANT HAS  
FAILED TO CALL THE NECESSARY EVIDENCE TO SUBSTANTIATE ITS ALLEGATIONS  
OF UNFAIR CONDUCT WHICH IT HAS MADE AGAINST THE RESPONDENT. WHILE THE  
BOARD CONDUCTS A PRELIMINARY INQUIRY INTO ALLEGATIONS OF FRAUD CONCERN-  
ING A UNION'S MEMBERSHIP EVIDENCE WITH THE ASSISTANCE OF AN EXAMINER,  
AND ASSUMES THE CONDUCT AT ANY HEARING WHICH MAY BE CALLED TO INQUIRE  
INTO FRAUD IN CONNECTION WITH MEMBERSHIP EVIDENCE, ITS PROCEDURES ARE  
PRIMARILY DIRECTED TO PRESERVE THE SECRECY OF THE UNION'S MEMBERSHIP.  
ITS PROCEDURES ALSO SERVE TO AVOID WHAT MIGHT OTHERWISE DEVELOP INTO  
AN UNWARRANTED INQUIRY INTO WHICH EMPLOYEES SUPPORT A UNION. HOWEVER,  
WHERE MEMBERSHIP IN A UNION IS NOT INVOLVED, THE BOARD'S PRACTICE IS  
TO HOLD A HEARING AT WHICH THE PARTIES MAY CALL WHATEVER EVIDENCE IS  
AVAILABLE TO THEM TO ESTABLISH THE ALLEGATIONS OF IMPROPER CONDUCT  
THAT HAVE BEEN MADE.

4. SECTION 71 OF THE ACT AFFORDS PROTECTION TO PERSONS WHO MAY BE CALLED AS WITNESSES IN ANY PROCEEDING BEFORE THIS BOARD. ACCORDINGLY, THE FACT THAT THE APPLICANT HAS EXPRESSED A FEAR THAT THE RESPONDENT MAY RETALIATE AGAINST ANY PERSON CALLED BY THE APPLICANT AS A WITNESS IS NOT SUFFICIENT REASON TO CAUSE THE BOARD TO DEPART FROM ITS USUAL PRACTICE OF REQUIRING THE APPLICANT TO BEAR THE ONUS OF ESTABLISHING BY MEANS OF VIVA VOCE TESTIMONY THE EVIDENCE IN SUPPORT OF ITS ALLEGATIONS OF IMPROPER CONDUCT. THE BOARD IS THEREFORE NOT PREPARED TO APPOINT AN EXAMINER TO "CORROBORATE" THE ALLEGATIONS MADE BY THE APPLICANT IN THIS MATTER.

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6. THE APPLICATION IS THEREFORE DISMISSED.

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3049-72-M: THE PUBLIC UTILITIES COMMISSION OF THE TOWN OF BOWMANVILLE (EMPLOYER) V. LOCAL UNION 2028, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, (AFL-CIO-CLC) (TRADE UNION).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS D. B. ARCHER AND H.J.F. ADE.

APPEARANCES AT THE HEARING: J. C. MURRAY AND M. WATSON FOR THE EMPLOYER; DAVID E. BUTLER AND K. J. WOODS FOR THE TRADE UNION.

DECISION OF THE BOARD: JANUARY 16, 1973.

1. THIS IS A REFERENCE FROM THE MINISTER MADE PURSUANT TO SECTION 96 OF THE LABOUR RELATIONS ACT. THE QUESTION THAT HAS BEEN REFERRED TO THE BOARD IS WHETHER THE MINISTER HAS THE AUTHORITY UNDER THE ACT TO APPOINT A CONCILIATION OFFICER.

2. THE PARTIES AT THE HEARING IN THIS MATTER AGREED THAT AUTHORIZED REPRESENTATIVES OF THE TRADE UNION AND THE EMPLOYER HAD EXECUTED A MEMORANDUM OF SETTLEMENT FILED WITH THE BOARD WHICH IS DATED JULY 25, 1972. ITEM 2 OF THAT MEMORANDUM READS "THE AGREEMENT SHALL BE EFFECTIVE FROM (THE DATE OF NOTICE OF RATIFICATION) AND SHALL CONTINUE IN FORCE UNTIL MARCH 31ST, 1974." IT WAS NOT DISPUTED THAT ONE OF THE TRADE UNION'S SIGNATORIES TO THE MEMORANDUM ORALLY NOTIFIED THE EMPLOYER WITHIN A FEW DAYS OF THE EXECUTION OF THE SAID DOCUMENT THAT THE TRADE UNION MEMBERSHIP HAD RATIFIED THE MEMORANDUM OF AGREEMENT.

3. THE REPRESENTATIVES OF THE TRADE UNION AT THE HEARING, HOWEVER, ALLEGED THAT THE BARGAINING COMMITTEE HAD NOT DISCUSSED OR AGREED TO THE AMENDMENT TO ARTICLE 20(H) OF THE PRIOR COLLECTIVE AGREEMENT DEALING WITH STAND-BY REGULATIONS, WHICH IS INCORPORATED INTO THE MEMORANDUM OF AGREEMENT, AND THAT THE MEMBERSHIP OF THE TRADE UNION



WERE NOT APPRISED OF THE AMENDMENT TO THE ARTICLE AT THE TIME THEY RATIFIED THE MEMORANDUM. WE WOULD MENTION THAT THE REPRESENTATIVES OF THE TRADE UNION AT THE HEARING ADMITTED THAT THE ABOVE SUBMISSIONS WERE BASED ON HEARSAY AND THAT THEY HAD NOT BEEN PRESENT AT THE NEGOTIATIONS. COUNSEL FOR THE EMPLOYER ON THE OTHER HAND ADVISED THE BOARD THAT ON THE BASIS OF HIS PERSONAL KNOWLEDGE THE AMENDMENT TO ARTICLE 20(H) HAD BEEN AGREED UPON BY THE PARTIES DURING NEGOTIATIONS AND ON THAT BASIS WAS INCORPORATED INTO THE MEMORANDUM OF AGREEMENT SIGNED BY THE PARTIES.

4. BASED ON ALL OF THE EVIDENCE WE ARE SATISFIED THAT THE BARGAINING COMMITTEE FOR THE TRADE UNION AGREED TO THE AMENDMENT TO ARTICLE 20(H) WHICH WAS INCORPORATED INTO THE MEMORANDUM OF AGREEMENT EXECUTED BY BOTH THE TRADE UNION AND THE EMPLOYER. FURTHER, HAVING PARTICULAR REGARD TO THE LETTER OF SEPTEMBER 14, 1972 FROM J. B. STONE, THE THEN BUSINESS MANAGER OF THE TRADE UNION, ADDRESSED TO MR. MORLEY WATSON, THE MANAGER OF THE EMPLOYER, WE FIND THAT THE TRADE UNION MUST BEAR THE RESPONSIBILITY FOR ANY DEFICIENCY IN THE MANNER IN WHICH THE TERMS OF THE MEMORANDUM OF AGREEMENT WERE PRESENTED TO THE MEMBERSHIP PRIOR TO ITS RATIFICATION.

5. IN THE RESULT THE BOARD FINDS THAT THE MEMORANDUM OF AGREEMENT DATED JULY 25, 1972, TAKEN TOGETHER WITH THE 1968-1969 COLLECTIVE AGREEMENT BETWEEN THE PARTIES AS AMENDED BY A MEMORANDUM OF AGREEMENT DATED JUNE 10, 1970 COVERING THE PERIOD FROM APRIL 1, 1970 TO MARCH 31, 1972, CONSTITUTES A VALID COLLECTIVE AGREEMENT BETWEEN THE PARTIES WHICH REMAINS IN FORCE AND EFFECT UNTIL MARCH 31, 1974. ACCORDINGLY, HAVING REGARD TO THE PROVISIONS OF SECTIONS 15 AND 45 OF THE ACT, THE INSTANT APPLICATION FOR CONCILIATION SERVICES IS UNTIMELY.

6. THEREFORE, OUR ANSWER TO THE MINISTER IS THAT HE DOES NOT HAVE THE AUTHORITY TO APPOINT A CONCILIATION OFFICER IN THIS MATTER.

2073-72-U: ALMA LAURA GORDON (COMPLAINANT) V. AUTY PRINTING LIMITED AND PRINTING SPECIALTIES AND PAPER PRODUCTS UNION LOCAL 466 (RESPONDENTS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS J. D. BELL AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: W. R. HERRIDGE AND MRS. A. GORDON FOR THE COMPLAINANT; L. C. ARNOLD, E. HODGES AND H. SCHMIDT FOR THE RESPONDENT UNION LOCAL 466; H. A. BERESFORD AND MRS. P. J. AUTY FOR THE RESPONDENT COMPANY AUTY PRINTING LIMITED.

DECISION OF THE BOARD:

JANUARY 18, 1973.

1. THIS IS A COMPLAINT MADE UNDER SECTION 79 OF THE LABOUR RELATIONS ACT. THE COMPLAINT, AS ORIGINALLY FRAMED, NAMED AUTY PRINTING LIMITED AND PRINTING SPECIALTIES AND PAPER PRODUCTS UNION LOCAL 466

AS RESPONDENTS. IT ALLEGED THAT IN OR ABOUT THE YEARS 1966 TO 1972 THE GRIEVOR (I.E. THE COMPLAINANT) WAS DEALT WITH BY THE TWO ABOVE NAMED RESPONDENTS CONTRARY TO THE PROVISIONS OF SECTIONS 58 AND 60 OF THE ACT, IN THAT THEY FAILED TO RECLASSIFY THE JOB CATEGORY OF THE COMPLAINANT.

2. AS NOTED IN THE DECISION OF THE BOARD HEREIN, DATED OCTOBER 4, 1972, AND CONFIRMED AT HEARINGS BEFORE THE PRESENT PANEL OF THE BOARD, THE COMPLAINANT WITHDREW THE COMPLAINT MADE AGAINST THE SAID CORPORATE RESPONDENT WITH RESPECT TO SECTION 58 OF THE LABOUR RELATIONS ACT AND ELECTED TO PROCEED ONLY AGAINST PRINTING SPECIALTIES AND PAPER PRODUCTS UNION LOCAL 466 (HEREINAFTER CALLED THE RESPONDENT) UNDER SECTION 60 OF THE ACT. THE COMPLAINT WITH RESPECT TO AUTY PRINTING LIMITED IS ACCORDINGLY DISMISSED.

3. THE COMPLAINANT COMMENCED TO WORK FOR AUTO PRINTING LIMITED (HEREINAFTER CALLED THE EMPLOYER) IN MARCH OF 1964 AS A HELPER IN THE SILK SCREEN DEPARTMENT. BY AUGUST OF 1966, SHE WAS WORKING FULL TIME ON A SMALL AIR PRESS, ONE OF THE THREE PRESSES USED BY THE EMPLOYER.

4. IN 1967, A COLLECTIVE AGREEMENT WAS REACHED BETWEEN THE EMPLOYER AND THE INTERNATIONAL PRINTING PRESSMEN, A PREDECESSOR OF THE RESPONDENT. UNDER THE TERMS OF THAT AGREEMENT, THE COMPLAINANT WAS CLASSIFIED AS A SILK SCREEN FEEDER OPERATOR. SHE PROTESTED UNSECCESFULLY AGAINST THIS CLASSIFICATION TO THE EXTEND OF TWICE LEAVING THE EMPLOYMENT OF THE EMPLOYER. SHE OUGHT TO BE CLASSIFIED AS AN APPRENTICE SILK SCREEN PRESS OPERATOR. THE ABOVE AGREEMENT WAS IN EFFECT UNTIL NOVEMBER OF 1969.

5. IN NOVEMBER 1969, A NEW COLLECTIVE AGREEMENT CAME INTO EFFECT. THE BARGAINING AGENT IN THIS AGREEMENT WAS, PRINTING SPECIALTIES AND PAPER PRODUCTS UNION, LOCAL 466, THE RESPONDENT HEREIN.

6. PRIOR TO THE COMMENCEMENT OF THE BARGAINING, WHICH RESULTED IN THE NEW 1969 AGREEMENT, A MEETING OF THE MEMBERSHIP OF THE UNION WAS HELD AT WHICH EMPLOYEES WERE INVITED TO PUT FORWARD SUGGESTION FOR AMENDMENT TO THE PRECEDING AGREEMENT. THESE REQUESTS WERE EMBODIED IN A WRITTEN SUBMISSION WHICH, AFTER FURTHER APPROVAL BY THE MEMBERSHIP, WAS PRESENTED TO THE COMPANY AS THE UNION'S BARGAINING DEMANDS. THE FIRST ITEM IN THESE SUBMISSIONS READ "RECLASSIFY ALMA GORDON AS SILK SCREEN PRESS OPERATOR". THE BOARD IS OF THE OPINION, BASED ON THE EVIDENCE, THAT A GENUINE ATTEMPT WAS MADE DURING THE NEGOTIATIONS TO HAVE THE EMPLOYER RECLASSIFY THE COMPLAINANT AND THAT THE FAILURE TO ACHIEVE THE DESIRED RESULT WAS DUE TO THE ADAMANT ATTITUDE TAKEN BY THE EMPLOYER ON THE ISSUE AND NOT TO ANY DEFAULT ON THE PART OF THE RESPONDENT.

7. AT THE CONCLUSION OF THE NEGOTIATIONS, A MEETING OF THE MEMBERSHIP WAS HELD AT WHICH THE MEMBERS WERE INFORMED CONCERNING THE COMPANY'S REPLY TO THE UNION'S SUBMISSIONS. THE EMPLOYER'S REJECTION OF

THE DEMAND FOR RECLASSIFICATION OF THE COMPLAINANT WAS MADE KNOWN TO THE MEETING. THE COMPLAINANT OBJECTED TO ACCEPTANCE OF THE OFFER BUT THE MAJORITY OF THE MEMBERSHIP ACCEPTED THE TERMS OF SETTLEMENT OFFERED BY THE EMPLOYER AND A NEW COLLECTIVE AGREEMENT ACCORDINGLY CAME INTO EFFECT.

8. THE COMPLAINANT CONTINUED TO EXPRESS DISSATISFACTION BECAUSE THE NEW CONTRACT DID NOT PROVIDE THE RELIEF SHE SOUGHT. SHE STATED SHE DID NOT PRESS THE MATTER TOO MUCH BECAUSE MR. AUTY, THE PROPRIETOR OF THE RESPONDENT EMPLOYER, WAS ILL. MR. AUTY DIED IN FEBRUARY 1970 AND MRS. AUTY TOOK OVER THE MANAGEMENT OF THE BUSINESS.

9. THE COMPLAINANT SOUGHT TO HAVE THE UNION APPROACH MRS. AUTY ON THE SUBJECT OF HER CLASSIFICATION AND RATE. MR. HODGES, THE UNION REPRESENTATIVE, IN THE COMPANY OF THE COMPLAINANT, TOOK THE MATTER UP WITH MRS. AUTY IN APRIL OF 1970. MRS. AUTY TOOK THE POSITION THAT THE CONTRACT WAS CLOSED AND DECLINED TO AGREE TO RECLASSIFY THE COMPLAINANT. SHE DID, HOWEVER, GIVE THE COMPLAINANT A PREMIUM INCREASE OF 10¢ PER HOUR.

10. THE COMPLAINANT WAS NOT SATISFIED. SHE SPOKE TO MR. HODGES AGAIN AND, ACCORDING TO HER TESTIMONY, HE SAID HE COULD GET WHAT SHE WANTED THROUGH ARBITRATION BUT THAT HE WAS AFRAID AS TO HOW SHE MIGHT BE USED AFTERWARDS BECAUSE THE EMPLOYER MIGHT PUSH HER PRETTY HARD. AS THE RESULT OF THIS DISCUSSION, THE COMPLAINANT WAS LEFT WITH THE IMPRESSION THAT MR. HODGES WOULD SEE THAT SHE WAS RECLASSIFIED UNDER THE NEXT COLLECTIVE AGREEMENT AND THE ARBITRATION ROUTE WAS ABANDONED.

11. IN FACT, ONE OF THE DEMANDS INCORPORATED INTO THE UNION'S WRITTEN BARGAINING SUBMISSIONS TO THE EMPLOYER AT THE NEGOTIATION FOR THE NEXT COLLECTIVE AGREEMENT WAS FOR THE RECLASSIFICATION OF THE COMPLAINANT TO THE CLASSIFICATION SHE WAS SEEKING. OTHER RECLASSIFICATIONS WERE ALSO REQUESTED. THESE SUBMISSIONS WERE PREPARED SOMETIME IN JANUARY OR FEBRUARY OF 1972 - THE TERM OF THE PRIOR AGREEMENT EXPIRED ON APRIL 30, 1972. THE COMPLAINANT WAS A MEMBER OF THE BARGAINING COMMITTEE THIS TIME AND CHAIRED THE MEETING AT WHICH THE SUBMISSIONS WERE PROPOSED BY THE MEMBERSHIP TO THE BARGAINING COMMITTEE.

12. THE MATTER OF THE COMPLAINANT'S RECLASSIFICATION WAS TAKEN UP WITH THE EMPLOYER DURING THE BARGAINING. IT WAS, AGAIN, REJECTED BY THE EMPLOYER. THE BARGAINING COMMITTEE SET THE QUESTION ASIDE AND PROCEEDED WITH THE OTHER DEMANDS AND LATER RETURNED TO THE RECLASSIFICATION MATTER. THE EMPLOYER STILL WOULD NOT MOVE ON THIS ITEM. THE EMPLOYER AND THE UNION THEN REACHED AGREEMENT ON OTHER MATTERS AND THE UNION BROUGHT THE PROPOSED AGREEMENT BACK TO THE MEMBERSHIP. THE MEMBERSHIP, WITH THE COMPLAINANT DISSENTING, ACCEPTED THE EMPLOYER'S OFFER WITH THE FULL KNOWLEDGE THAT RECLASSIFICATION OF THE COMPLAINANT HAD BEEN DENIED AND THE NEW COLLECTIVE AGREEMENT WAS DRAWN UP. THE COMPLAINANT REFUSED TO SIGN THE AGREEMENT.



13. THE BOARD FINDS THAT THE RESPONDENT UNION MADE REASONABLE ATTEMPTS TO BRING ABOUT THE RECLASSIFICATION OF THE COMPLAINANT THROUGH REPRESENTATIONS AND NEGOTIATIONS. IT IS TO BE OBSERVED THAT THE MATTER WAS PLACED SQUARELY BEFORE THE MEMBERS OF THE BARGAINING UNIT AND THAT THEY WERE FULLY AWARE OF THE REQUESTS MADE BY THE UNION ON BEHALF OF THE COMPLAINANT. THE MEMBERSHIP, HOWEVER, VOTED OVERWHELMINGLY ON EACH OCCASION TO ACCEPT THE EMPLOYER'S OFFER NOTWITHSTANDING THE FACT THAT THE SUBMISSION MADE ON BEHALF OF THE COMPLAINANT HAD, TO THE FULL KNOWLEDGE OF THE MEMBERSHIP, BEEN REFUSED BY THE EMPLOYER. IN THOSE CIRCUMSTANCES, IT WAS OBVIOUSLY REASONABLE AND PROPER FOR THE UNION TO CHOOSE TO ADVANCE THE INTERESTS OF THE MAJORITY OF THE MEMBERS OF THE BARGAINING UNIT AS DIRECTED BY THEM RATHER THAN TO FURTHER PURSUE THE PERSONAL INTEREST OF ONE MEMBER TO THE POSSIBLE DETRIMENT OF THE MEMBERSHIP AT LARGE. THE COMPLAINANT, ON THE OTHER HAND, ALTHOUGH A MEMBER OF THE BARGAINING COMMITTEE, AS ALREADY NOTED, REFUSED TO ACCEPT THE VERDICT OF THE MEMBERSHIP WHOM SHE REPRESENTED AND HELD OUT FOR HER PERSONAL REQUIREMENTS.

14. THE COMPLAINANT ALSO ALLEGED THAT SHE HAD BEEN DISCRIMINATED AGAINST WITH RESPECT TO JOB OPPORTUNITIES AND LAY-OFFS. HER COMPLAINT IN THIS AREA CENTRES UPON THE FACT THAT A PARTICULAR EMPLOYEE, MARTIN, WITH LESS SENIORITY THAN SHE HOLDS HAS BEEN RETAINED IN EMPLOYMENT WHEN SHE WAS LAID OFF. MARTIN WAS AN APPRENTICE IN THE TRADE. SHE FURTHER COMPLAINS THAT MARTIN WAS GIVEN MORE OPPORTUNITIES THAN SHE WAS TO EXPAND HIS KNOWLEDGE AND SKILLS. IN THIS LATTER RESPECT, THE EVIDENCE INDICATES THAT THE COMPLAINANT HAD THE OPPORTUNITY TO BUMP JUNIOR EMPLOYEES, OTHER THAN MARTIN, BUT REFUSED BECAUSE HER SIGHTS WERE SET ON DISPLACING MARTIN. IT WAS ALSO GIVEN IN EVIDENCE THAT SHE REFUSED TO MOVE AROUND IN JOBS BECAUSE SHE WOULD NOT SACRIFICE HER PREMIUM IN THE INTEREST OF VARYING HER EXPERIENCE.

15. THE COMPLAINANT WAS LAID OFF IN SEPTEMBER 1971 AND FILED A GRIEVANCE. THE MATTER WAS TAKEN UP WITH MANAGEMENT BY HODGES UNDER THE GRIEVANCE PROCEDURE. THE EMPLOYER MAINTAINED THAT THE COMPLAINANT WAS NOT AS VERSATILE AS MARTIN. HODGES CHECKED WITH HIS SUPERIORS WITH RESPECT TO THE MERITS OF THE GRIEVANCE. THE CONSENSUS WAS THAT IN VIEW OF THE PROVISIONS OF SECTION 4.02 OF THE COLLECTIVE AGREEMENT AND THE COMPARATIVE SKILLS AND EXPERIENCE OF MARTIN AND THE COMPLAINANT, THE GRIEVANCE WOULD NOT SUCCEED. SECTION 4.02 PROVIDES:

"SENIORITY STANDING SHALL GOVERN ALL CASES OF LAY-OFF OR REHIRING OF STAFF WITHIN THE VARIOUS JOB CLASSIFICATIONS, PROVIDED EFFICIENCY OF OPERATION IS NOT IMPAIRED."

THE UNION WAS OF THE CONSIDERED OPINION THAT THE GRIEVANCE WOULD FOUNDER UPON THE ABOVE PROVISIO UPON WHICH THE COMPANY RELIED AS JUSTIFICATION FOR THE RETENTION OF MARTIN.

16. THE COMPLAINANT WAS LAID OFF AGAIN IN MARCH 1972. SHE DID

NOT FILE A GRIEVANCE ON THIS OCCASION BUT DID COMPLAIN ABOUT IT. IT IS QUITE OBVIOUS THAT THE SITUATION ON THE SECOND LAY-OFF WAS IDENTICAL TO THAT OBTAINING WITH RESPECT TO THE FIRST. WHEN ASKED IF SHE HAD BROUGHT UP THE SUBJECT OF THE LAY-OFF DURING THE NEGOTIATIONS OF THAT YEAR, THE COMPLAINANT SAID SHE DID NOT BECAUSE SHE DID NOT FEEL THERE WAS ANY POINT AND THAT NOTHING WOULD BE DONE. HER OBJECTION WAS AGAIN RESTRICTED TO HER DESIRE TO DISPLACE MARTIN RATHER THAN TO BUMP ELSEWHERE IN THE PLANT.

17. ALTHOUGH SHE DID NOT FILE A GRIEVANCE WITH RESPECT TO THE SECOND LAY-OFF AND DID NOT PRESS THE MATTER AT THE 1972 NEGOTIATIONS WHICH TOOK PLACE AT THE TIME OF THE LAY-OFF, THE COMPLAINANT DID WRITE A LETTER TO MR. JOHN STEELE, WHO WAS IDENTIFIED AS CANADIAN VICE-PRESIDENT OF THE PRINTING PRESSMEN AND ASSISTANTS UNION, COMPLAINING ABOUT HER TREATMENT BY THE EMPLOYER AND THE UNION. SHE HAD RECEIVED NO REPLY TO THIS LETTER WHICH WAS DATED MARCH 10, 1972 AT THE TIME OF THE HEARING. THE LETTER DID NOT COME TO THE ATTENTION OF THE RESPONDENT UNTIL THE COMMENCEMENT OF THESE PROCEEDINGS AND NOTHING WAS COMMUNICATED TO THE RESPONDENT BY STEELE OR THE PARENT UNION WITH RESPECT TO THE COMPLAINTS CONTAINED THEREIN. THESE, GENERALLY SPEAKING, EMBODIED THE SAME MATTERS AS WERE THE SUBJECT OF THE PRESENT APPLICATION.

18. THE BOARD FINDS THAT THE UNION MADE A REASONABLE AND SINCERE EFFORT TO ASSIST THE COMPLAINANT TO OBTAIN RECLASSIFICATION AND THAT IN ADVISING HER WITH RESPECT TO LAY-OFF, IT ACTED WITH HONEST CONVICTION AFTER EXAMINING THE FACTS AND THE RELEVANT TERMS OF THE COLLECTIVE AGREEMENT. THE LATTER TERMS CERTAINLY APPEAR TO BE REASONABLY CAPABLE OF THE INTERPRETATION PLACE UPON THEM BY THE UNION.

19. THE COMPLAINT IS ACCORDINGLY DISMISSED.

2960-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA,  
LOCAL 2679 (APPLICANT) v. MAIN LUMBER COMPANY (RESPONDENT).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN AND BOARD MEMBERS J. D. BELL AND O. HODGES.

APPEARANCE AT THE HEARING: T. G. HARKNESS AND RUDY BRANDT FOR THE APPLICANT; R. C. FILION, RUPERT HAUSEN AND GIOVANNI GUGLIETTI FOR THE RESPONDENT.

DECISION OF THE BOARD: JANUARY 23, 1973.

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3. AT THE HEARING OF THIS MATTER ON DECEMBER 28, 1972, THE RESPONDENT INITIALLY CHALLENGED THE RIGHT OF THE APPLICANT TO REPRESENT ITS EMPLOYEES IN THE SAID BARGAINING UNIT ON THE GROUND THAT THE APPLI-

CANT'S CONSTITUTION IS DISCRIMINATORY IN THAT IT PLACES RESTRICTIONS ON ELIGIBILITY FOR MEMBERSHIP ON THE BASIS OF AGE. THE RESPONDENT'S SECOND CHALLENGE RELATES TO THE ALLEGATION THAT THE APPLICANT'S CONSTITUTION PRECLUDES THE EMPLOYEES IN THE SAID BARGAINING UNIT FROM ELIGIBILITY FOR MEMBERSHIP IN THE APPLICANT.

4. THE RELEVANT BACKGROUND TO THIS APPLICATION IS AS FOLLOWS: THE RESPONDENT OPERATES A LUMBER YARD IN OAKVILLE AND ACTS ESSENTIALLY AS A CLEARING HOUSE FOR LUMBER AND ASSOCIATED BUILDING MATERIALS FOR ITS CUSTOMERS WHO ARE PRIMARILY ENGAGED IN THE CONSTRUCTION INDUSTRY. WHAT LITTLE MANUFACTURING THAT IS DONE ON THE PREMISES IS PERFORMED, FOR THE MOST PART, BY TWO EMPLOYEES CLASSIFIED BY THE RESPONDENT AS "CARPENTERS". THESE INDIVIDUALS ARE INVOLVED IN THE PRODUCTION OF SPECIALTY CUSTOMS PRODUCTS, SUCH AS CUSTOM-MADE WINDOWS AND SHUTTERS. IN THIS REGARD, THE APPLICANT, WHICH EXCLUSIVELY REPRESENTS EMPLOYEES IN THE INDUSTRIAL SECTOR, AS OPPOSED TO THOSE ENGAGED IN THE CONSTRUCTION SECTOR OF THE ECONOMY, MAINTAINS THAT THE WORK OF THESE TWO EMPLOYEES DOES NOT EMBRACE THE TRADITIONAL CRAFT CARPENTER OVER WHICH ITS SISTER LOCALS WOULD HAVE JURISDICTION, BUT RATHER WOULD FALL WITHIN THE CLASSIFICATION OF WHAT HAS BEEN LOOSELY REFERRED TO AS A "CABINET-MAKER". THE REMAINDER OF THE EMPLOYEES IN THE SAID BARGAINING UNIT ARE MADE UP OF FORK LIFT OPERATORS, TRUCK DRIVERS, YARDMEN AND SHIPPERS. THESE EMPLOYEES ARE ESSENTIALLY ENGAGED IN THE UNLOADING OF THE BUILDING MATERIALS RECEIVED FROM VARIOUS SUPPLIERS UPON THE PREMISES OF THE RESPONDENT AND THE LOADING AND TRANSPORTING OF SAME TO ITS CUSTOMERS. ASIDE FROM THE CUSTOM WORK AS SET OUT ABOVE AND FOR THE CUTTING OF THE LUMBER PURSUANT TO A PARTICULAR CUSTOMER'S REQUEST, IT WOULD APPEAR THAT THE VAST MAJORITY OF THE BUILDING MATERIALS ARE DELIVERED TO THE CUSTOMER IN THE SAME FORM AS IT ARRIVES UPON THE RESPONDENT'S PREMISES.

5. SECTION 42 F OF THE "CONSTITUTION AND LAWS OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA", AS ADOPTED BY THE APPLICANT, READS AS FOLLOWS:

"F A CANDIDATE TO BE ADMITTED TO BENEFICIAL OR SEMI-BENEFICIAL MEMBERSHIP IN ANY LOCAL UNION OF THE UNITED BROTHERHOOD MUST NOT BE LESS THAN SEVENTEEN (17) AND NOT MORE THAN SIXTY (60) YEARS OF AGE AND MUST BE AN APPRENTICE OR JOURNEYMAN CARPENTER, JOINER, MILLWRIGHT, PILE DRIVER, BRIDGE, DOCK AND WHARF CARPENTER, DIVER, UNDERPINNER, TIMBERMAN, CORE DRILLER, SHIPWRIGHT, BOAT BUILDER, SHIP CARPENTER, JOINER AND CAULKER; CABINET MAKER, BENCH HAND, STAIR BUILDER, MILLMAN; WOOD AND RESILIENT FLOOR LAYER AND FINISHER, CARPET LAYER, SHINGLER, SIDER, INSULATOR, ACOUSTIC AND DRY WALL APPLICATOR, SHORER AND HOUSE MOVER; LOGGER, LUMBER AND SAWMILL WORKER, SHINGLE WEAVER; FURNITURE



WORKER, REED AND RATTAN WORKER; CASKET AND COFFIN MAKER; BOX MAKER, RAILROAD CARPENTER AND CAR BUILDER; AND ALL THOSE ENGAGED IN THE OPERATION OF WOODWORKING OR OTHER MACHINERY REQUIRED IN THE FASHIONING, MILLING OR MANUFACTURING OF PRODUCTS USED IN THE TRADE, OR ENGAGED AS HELPERS TO ANY OF THE ABOVE DIVISIONS OR SUB-DIVISIONS, OR THE HANDLING, ERECTION, AND INSTALLATIONS OF MATERIAL ON ANY OF THE ABOVE DIVISION OR SUB-DIVISIONS, BURNING, WELDING AND RIGGING, THE USE OF ANY INSTRUMENT OR TOOL FOR LAYOUT WORK INCIDENTAL TO THE TRADE."

6. IT IS THE POSITION OF THE RESPONDENT THAT THIS PROVISION, IN EFFECT, DISCRIMINATES AGAINST PERSONS OVER THE AGE OF SIXTY AS REGARDS MEMBERSHIP IN THE APPLICANT. ALTHOUGH THE QUESTION OF DISCRIMINATION BECAUSE OF AGE IS NOT SPECIFICALLY SET OUT IN THE LABOUR RELATIONS ACT (SEE SECTION 12) AS A SPECIFIC BAR TO CERTIFICATION, THE RESPONDENT SUBMITS THAT SUCH A PROVISION IS NEVERTHELESS CONTRARY TO ONTARIO LAW.

7. IN THIS REGARD, SECTION 4A OF THE ONTARIO HUMAN RIGHTS CODE, R.S.O. 1970, c. 318, AS AMENDED BY 1971, c. 50, s. 63 AND 1972, c. 119, PROVIDES AS FOLLOWS:

"--(1) NO TRADE UNION SHALL EXCLUDE FROM MEMBERSHIP OR EXPEL OR SUSPEND ANY PERSON OR MEMBER OR DISCRIMINATE AGAINST ANY PERSON OR MEMBER BECAUSE OF RACE, CREED, COLOUR, AGE, SEX, MARITAL STATUS, NATIONALITY, ANCESTRY OR PLACE OF ORIGIN."

SECTION 19(A) OF THE SAID CODE AS AMENDED FURTHER PROVIDES THAT;

"AGE" MEANS ANY AGE OF FORTY YEARS OR MORE AND LESS THAN SIXTY-FIVE YEARS."

8. THE CODE THEREFORE HAS NO APPLICATION TO ACTS OF DISCRIMINATION IN THIS REGARD AFFECTING PERSONS UNDER FORTY YEARS OF AGE AND TO THOSE WHO HAVE ATTAINED THEIR SIXTY-FIFTH BIRTHDATE. THUS, THE RESPONDENT'S ALLEGATION OF DISCRIMINATION BECAUSE OF AGE, RELATES ONLY TO THOSE PERSONS BETWEEN THE AGES OF FORTY AND SIXTY-FIVE YEARS.

9. THE EVIDENCE AS ADDUCED BY THE APPLICANT IN THIS REGARD IS TO THE EFFECT THAT IT HAS NO BENEFICIAL MEMBERS WHO COULD CLAIM ENTITLEMENT TO PENSION BENEFITS. THE APPLICANT HOWEVER DOES PERMIT BOTH SEMI-BENEFICIAL AND NON-BENEFICIAL MEMBERSHIP IN ITS ORGANIZATION. THE DIFFERENCE BETWEEN THESE TWO CATEGORIES IS THAT SEMI-BENEFICIAL MEMBERS ARE ENTITLED TO A FUNERAL DONATION AND CERTAIN SICK BENEFITS. ON THE OTHER HAND, NON BENEFICIAL MEMBERS, NAMELY THOSE WHO HAVE JOINED THE APPLICANT

AFTER ATTAINING THEIR SIXTIETH YEAR ARE NOT ENTITLED TO SUCH BENEFITS, NOR ARE THEY UNDER THE TERMS OF THE CONSTITUTION ENTITLED TO ACT AS REPRESENTATIVES OF THE APPLICANT TO ANY OTHER BODY. NEVERTHELESS, THESE INDIVIDUALS ARE ONLY REQUIRED TO PAY A TWENTY-FIVE DOLLAR INITIATION FEE AND MONTHLY DUES OF FIVE DOLLARS, AS COMPARED WITH THE FIFTY DOLLAR INITIATION FEE AND SEVEN DOLLAR MONTHLY DUES REQUIRED FROM SEMI-BENEFICIAL MEMBERS.

10. EVEN ASSUMING BUT WITHOUT DECIDING THAT THE APPLICANT IN THE CIRCUMSTANCES AS SET OUT ABOVE, DOES DISCRIMINATE BECAUSE OF AGE CONTRARY TO THE PROVISIONS OF THE CODE, AND WE MAKE NO SPECIFIC FINDING IN THIS REGARD, THE FACTS OF THIS CASE FALL SQUARELY WITHIN THE PRINCIPLES AS SET OUT IN RE CSAO NATIONAL (INC.) AND OAKVILLE TRAFALGAR MEMORIAL HOSPITAL ASSOCIATION [1972] 2 O.R. 498 (C.A.). AT PAGE 501, JESSOP J.A. STATES:

"...IT IS TO BE BORNE IN MIND THAT FAR FROM REQUIRING DEMOCRATIC PRACTICES IN COLLECTIVE BARGAINING THE STATUTE, (E.G. THE LABOUR RELATIONS ACT), IN S. 7, CONTEMPLATES THAT A UNION MAY REPRESENT ALL THE EMPLOYEES IN A BARGAINING UNIT ALTHOUGH A BARE MAJORITY OF THEM ARE MEMBERS OF THE UNION. MOREOVER, S. 12 OF THE STATUTE PROVIDES IN PART:

12. THE BOARD SHALL NOT CERTIFY A TRADE UNION....IF IT DISCRIMINATES AGAINST ANY PERSON BECAUSE OF HIS RACE, CREED, COLOUR, NATIONALITY, ANCESTRY OR PLACE OF ORIGIN.

IN MY VIEW THE MAXIM EXPRESSIO UNIUS HAS APPLICATION AND THAT BY ENACTING S. 12 THE LEGISLATURE HAS REMOVED FROM CONSIDERATION BY THE BOARD ON AN APPLICATION FOR CERTIFICATION OTHER FORMS OF DISCRIMINATION."

ACCORDINGLY, THE BOARD REJECTS THE POSITION TAKEN BY THE RESPONDENT IN THIS REGARD.

11. IT IS ALSO THE POSITION OF THE RESPONDENT THAT AS THE APPLICANT REPRESENTS GENERALLY ONLY EMPLOYEES ENGAGED IN THE MANUFACTURE OF WOOD AND RELATED PRODUCTS, THE SPECIFIC CLASSIFICATIONS OF WHICH ARE LISTED UNDER SECTION 42 F OF THE APPLICANT'S CONSTITUTION, AND AS IT HAS NEVER IN FACT REPRESENTED EMPLOYEES IN A LUMBER YARD NOR BARGAINED IN RELATION TO THE CLASSIFICATIONS OF THE EMPLOYEES IN THE SAID BARGAINING UNIT, THAT ACCORDINGLY THE APPLICATION SHOULD BE DISMISSED.

12. IT IS CONCEDED BY THE APPLICANT THAT IT HAS NEVER REPRESENTED EMPLOYEES IN LUMBER YARDS. NEVERTHELESS, EVIDENCE WAS ADDUCED TO THE

EFFECT THAT IT HAS IN THE PAST REPRESENTED EMPLOYEES OF EMPLOYERS ENGAGED IN OTHER ACTIVITIES SUCH AS THE MANUFACTURE OF FIBRE DRUMS, CEMENT HOUSING UNITS, STORE FIXTURES AND DISPLAY UNITS, THE CLASSIFICATIONS OF WHICH, IT WOULD APPEAR, ARE NOT ALL SPECIFICALLY SET OUT IN THE CONSTITUTION. IN THIS REGARD, IT IS ALSO CLEAR THAT THE APPLICANT WAS SET UP TO ADMINISTER THE INDUSTRIAL SECTOR AS OPPOSED TO ITS SISTER LOCALS WHICH GENERALLY ORGANIZE ALONG CRAFT LINES IN THE CONSTRUCTION INDUSTRY.

13. HAVING REGARD TO THE TOTALITY OF THE EVIDENCE AS ADDUCED AT THE HEARING AND TAKING INTO ACCOUNT THE REPRESENTATIONS OF THE PARTIES THERETO, WE ARE SATISFIED, IN THE PARTICULAR CIRCUMSTANCES OF THIS CASE, THAT THE APPLICANT IN ITS CONSTITUTION HAS NOT CREATED A BAR TO THE ADMISSION TO MEMBERSHIP OF EMPLOYEES OF THE RESPONDENT EMPLOYED IN THE CLASSIFICATIONS AS SET OUT IN PARAGRAPH #4 HEREIN. THE POSITION TAKEN BY THE RESPONDENT IN THIS REGARD, IS ACCORDINGLY REJECTED.

14. MR. C. F. ROBICHEAU, EXAMINER, IS AUTHORIZED TO INQUIRE INTO AND REPORT BACK TO THE BOARD CONCERNING THE DUTIES AND RESPONSIBILITIES OF SHEDRICK PARR.

1593-71-R: HOTEL AND RESTAURANT EMPLOYEES' AND BARTENDERS' INTERNATIONAL UNION, LOCAL 280 A.F.L. - C.I.O. - C.L.C. AND CEDARBRAE HOTELS AND HOMES LTD., CARRYING ON BUSINESS AS THE THUNDERBIRD MOTOR HOTEL (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: J. A. RYDER, GERRY WARNER AND FRANK CORTESE FOR THE APPLICANT; R. C. FILION, T. COLLIER AND G. SWEENEY FOR THE RESPONDENT; NO ONE APPEARING FOR THE OBJECTORS.

DECISION OF VICE-CHAIRMAN FRANK V. BOSCARIOL, AND BOARD MEMBER E. BOYER: JANUARY 24, 1973.

1. IN THIS APPLICATION FOR CERTIFICATION, THE APPLICANT IS SEEKING ITS USUAL BARGAINING UNIT COMPOSED OF ALL TAPMEN, BARTENDERS, BEVERAGE WAITERS, BARBOYS AND IMPROVERS IN THE EMPLOY OF THE RESPONDENT AT ITS THUNDERBIRD MOTOR HOTEL IN BRAMPTON. THE RESPONDENT, ON THE OTHER HAND, MAINTAINS THAT THE APPROPRIATE BARGAINING UNIT IN THESE CIRCUMSTANCES, SHOULD NOT BE RESTRICTED TO THOSE EMPLOYEES IN ITS COCKTAIL LOUNGE AND BEVERAGE ROOM BUT SHOULD ALSO EXTEND TO THE EMPLOYEES IN ITS DINING ROOMS, ON THE BASIS OF A SHARED COMMUNITY OF INTEREST.

2. THE BARGAINING UNIT AS PROPOSED BY THE APPLICANT WOULD APPEAR TO EMBRACE THOSE EMPLOYEES PRIMARILY ENGAGED IN THE SERVING OF ALCOHOL TO THE RESPONDENT'S CUSTOMERS AT ITS DOWNSTAIRS BEVERAGE ROOM (HEREINAFTER REFERRED TO AS THE PUB LOUNGE) AND TO THE RESPONDENT'S CUSTOMERS AT ITS COCKTAIL LOUNGE LOCATED ON THE MAIN FLOOR (HEREINAFTER REFERRED TO AS THE POW WOW LOUNGE).



3. IT IS THE SUBMISSION OF THE RESPONDENT THAT THE EMPLOYEES PRIMARILY ENGAGED IN THE SERVING OF ALCOHOL TO THE CUSTOMERS SITUATE IN THE RESPONDENT'S PUB LOUNGE AND POW WOW LOUNGE CANNOT EFFECTIVELY BE SEPARATED OR "CARVED" OUT FROM ITS DINING ROOM EMPLOYEES PRIMARILY ENGAGED IN THE SERVING OF FOOD. THESE LATTER EMPLOYEES, FOR THE MOST PART, WORK OUT OF THE MAIN DINING ROOM, ON THE MAIN FLOOR (HEREINAFTER REFERRED TO AS THE TEE PEE DINING LOUNGE), TWO ADDITIONAL DINING ROOMS ON THE LOWER LEVEL (HEREINAFTER REFERRED TO AS THE REGENCY ROOM AND THE BOARD ROOM), TOGETHER WITH A BANQUET ROOM (HEREINAFTER REFERRED TO AS THE GOLD ROOM).

4. THE RESPONDENT'S FACILITIES ON THE MAIN FLOOR THEREFORE INCLUDE THE POW WOW LOUNGE AND THE ADJACENT TEE PEE DINING LOUNGE. THESE TWO AREAS ARE SEPARATED ONLY BY A PARTIAL PARTITION. (SEE EXHIBIT 2A FILED AT THE EXAMINER'S HEARING). BOTH AREAS ARE ALSO SERVED BY A COMMON BAR AND KITCHEN. IN THIS REGARD, THE EVIDENCE DISCLOSES THAT EMPLOYEES IN THE POW WOW LOUNGE ARE ALSO INVOLVED IN THE SERVING OF FOOD WHILE EMPLOYEES IN THE TEE PEE LOUNGE ALSO PARTICIPATE IN THE SERVING OF LIQUOR. FURTHER, WHILE ENGAGED IN THESE INTERCHANGE OF ACTIVITIES, IT WOULD APPEAR THAT THE NORMAL WAGES OF THE EMPLOYEES INVOLVED REMAIN UNALTERED. ON THE LOWER LEVEL IN ADDITION TO THE GOLD ROOM (EXHIBIT 2C FILED AT THE EXAMINER'S HEARING) WHICH WOULD APPEAR TO BE IN A RATHER ISOLATED AREA, ARE THE REGENCY ROOM AND THE BOARD ROOM. HOWEVER, THESE LATTER "ROOMS" ARE NOT IN FACT PARTITIONED BUT TOGETHER WITH THE PUB LOUNGE, FORM IN EFFECT, ONE LARGE ROOM. (EXHIBIT 2B FILED AT THE EXAMINER'S HEARING). WHILE THE PUB LOUNGE HAS BEEN ISSUED A LOUNGE LICENCE UNDER THE LIQUOR LICENCE ACT, BOTH THE REGENCY ROOM AND THE BOARD ROOM POSSESS DINING ROOM LICENCES. AS A RESULT, WHEREAS IN THE PUB LOUNGE, LIQUOR IS SERVED WHERE FOOD CANNOT BE SOLD OR ADVERTISED (ALTHOUGH IT MAY BE CONSUMED THERE), THE SALE OF LIQUOR IN THE DINING LOUNGES MUST NOT EXCEED THE SALE OF FOOD IN DOLLAR VALUE. IN THIS REGARD, FOOD IS AVAILABLE TO THE CUSTOMERS IN ALL THREE "ROOMS" FROM A COMMON SNACK BAR WHICH IS ALSO SHOWN IN EXHIBIT 2B, ABOVE. THE SAME LIQUOR AND FOOD REQUIREMENTS ARE APPLICABLE DOWNSTAIRS AS APPLIES TO THE POW WOW LOUNGE AND THE TEE PEE DINING LOUNGE.

5. HAVING REGARD TO THE TOTALITY OF THE EVIDENCE IN THIS REGARD AND TAKING INTO ACCOUNT THE NATURE OF THE RESPONDENT'S OPERATIONS AS ABOVE DESCRIBED, TOGETHER WITH THE FACT OF THE COMMON SUPERVISION OF MARGARET CHARLES OVER THE EMPLOYEES IN THE POW WOW ROOM AND THE TEE PEE LOUNGE (AS WELL AS THE GOLD ROOM), WE FIND THAT THERE IS A REGULAR INTERCHANGE AS BETWEEN THE BEVERAGE ROOM AND COCKTAIL LOUNGE EMPLOYEES, ON THE ONE HAND, WITH THE DINING ROOM EMPLOYEES OF THE RESPONDENT, ON THE OTHER. HAVING REGARD TO THE FOREGOING, THE BOARD THEREFORE FINDS THAT THE DINING ROOM EMPLOYEES SHARE A COMMUNITY OF INTEREST WITH THE EMPLOYEES IN THE BEVERAGE ROOM AND COCKTAIL LOUNGE SUCH THAT THESE TWO GROUPS OF EMPLOYEES, ASIDE FROM THE FACTOR AS SET OUT IN PARAGRAPH #9 HEREIN, COULD OTHERWISE BE FOUND APPROPRIATE FOR INCLUSION IN A SINGLE BARGAINING UNIT.

6. UNITS COMPRISING BOTH BEVERAGE ROOM-COCKTAIL LOUNGE AND DINING ROOM SERVICE EMPLOYEES HAVE BEEN DEEMED APPROPRIATE BY THE BOARD IN OTHER GEOGRAPHIC AREAS NOT FALLING WITHIN METROPOLITAN TORONTO AND OSHAWA. IN THIS REGARD THE EVIDENCE DISCLOSES THAT THE "MISCELLANEOUS" LOCAL UNIONS OF THE PARENT INTERNATIONAL UNION HAVE ENTERED INTO COLLECTIVE AGREEMENTS WHICH COVERED BOTH CATEGORIES OF EMPLOYEES. MOREOVER, AS REGARDS THE GEOGRAPHIC AREA OF METROPOLITAN TORONTO AND OSHAWA, IT IS CLEAR THAT THE APPLICANT IS THE ONLY AFFILIATED LOCAL UNION THAT "CARVES" OUT ITS OWN BEVERAGE UNIT. IN THIS REGARD, TWO SISTER LOCAL UNIONS OF THE APPLICANT ARE ALSO ACTIVE. LOCAL 254, THE "RESTAURANT" LOCAL REPRESENTS RESTAURANT CAFETERIA AND DINING ROOM STAFFS, WHILE LOCAL 299, THE "MISCELLANEOUS" LOCAL, IN ADDITION TO ORGANIZING DINING ROOM EMPLOYEES, BARGAINS ON BEHALF OF "ALL EMPLOYEE" UNITS INCLUDING BARTENDERS, BEVERAGE ROOM WAITERS, FOOD WAITERS, BELL HOPS, CHAMBER MAIDS, DOORMEN AND KITCHEN STAFF. IT WOULD FURTHER APPEAR THAT AS REGARDS THEIR COMMON JURISDICTION OVER BEVERAGE ROOM STAFF, THESE SISTER LOCALS WOULD SETTLE THE QUESTION BETWEEN THEMSELVES ON AN AD HOC BASIS. IT IS CONCEDED BY THE RESPONDENT THAT THE TOWN OF BRAMPTON IS SITUATE IN AN AREA WITHIN THE ADMINISTRATIVE CAPABILITIES OF THE APPLICANT.

7. CONTRARY TO THE INITIAL TESTIMONY APPEARING IN THE EXAMINER'S REPORT, OF FRANK CORTESE, THE SECRETARY-TREASURER AND BUSINESS AGENT OF THE APPLICANT, THE INTERNATIONAL CONSTITUTION (EXHIBIT #1) OF THE APPLICANT'S BY-LAWS, (EXHIBIT #2) DO NOT DEFINE THE JURISDICTION AS BETWEEN LOCAL 280 AND LOCAL 299 OVER THE BARTENDERS AND BEVERAGE ROOM STAFF. HOWEVER, IT WOULD APPEAR THAT JURISDICTION OVER THESE EMPLOYEES WOULD FALL TO LOCAL 299 WHERE IT SOUGHT TO ORGANIZE ALL EMPLOYEE UNITS IN ESTABLISHMENTS CONTAINING MORE THAN ONE HUNDRED ROOMS. CORTESE FURTHER TESTIFIED THAT THE APPLICANT WAS BOUND BY THE INTERNATIONAL CONSTITUTION EXCEPT WHERE A DISPENSATION WAS GRANTED BY THE INTERNATIONAL PRESIDENT OR WHERE IT CONFLICTED WITH PROVINCIAL LAW. THE WITNESS NEVERTHELESS UPON CROSS-EXAMINATION BEFORE THE BOARD, CONCEDED THAT THE APPLICANT DID NOT FOLLOW THE PROVISIONS OF ARTICLE X, SECTION 3 OF THE SAID CONSTITUTION WHICH PROVIDES FOR BARTENDER LOCAL UNION JURISDICTION OVER ONLY BARTENDERS AND BAR-BOYS. IT IS INTERESTING TO NOTE THAT ARTICLE IX OF THE CONSTITUTION FURTHER PROVIDES FOR "WAITRESSES' LOCALS" (SECTION 5) HAVING JURISDICTION OVER WAITRESSES, CAFETERIA WAITRESSES AND BUS GIRLS, TOGETHER WITH "WAITERS' LOCALS" (SECTION 6) GRANTED JURISDICTION OVER ALL WAITERS, CAFETERIA WAITERS AND BUS BOYS. HAVING REGARD TO THE TOTALITY OF THE EVIDENCE HOWEVER, WE ARE SATISFIED THAT THE APPLICANT HAS AN ESTABLISHED PRACTICE OF REPRESENTING NOT ONLY BARTENDERS BUT ALSO PERSONS COMMONLY ASSOCIATED IN BARGAINING WITH THIS CRAFT. THIS JURISDICTIONAL PRACTICE HAS BEEN RECOGNIZED BY THE BOARD IN THE PAST, AND, IN EFFECT, GRANTS TO THE APPLICANT CRAFT UNIT STATUS AS CONTEMPLATED IN SECTION 6(2) OF THE ACT. (IN THIS REGARD, SEE THE DECISION IN THE PILOT HOLDINGS LIMITED CASE, OLRB M.R. APRIL 1961, AT PAGE 2).

8. SECTION 6(2) OF THE ACT PROVIDES:

"ANY GROUP OF EMPLOYEES WHO EXERCISE TECHNICAL SKILLS OR WHO ARE MEMBERS OF A CRAFT BY REASON OF WHICH THEY ARE DISTINGUISHABLE FROM THE OTHER EMPLOYEES AND COMMONLY BARGAIN SEPARATELY AND APART FROM OTHER EMPLOYEES THROUGH A TRADE UNION THAT ACCORDING TO ESTABLISHED TRADE UNION PRACTICE PERTAINS TO SUCH SKILLS OR CRAFT SHALL BE DEEMED BY THE BOARD TO BE A UNIT APPROPRIATE FOR COLLECTIVE BARGAINING IF THE APPLICATION IS MADE BY A TRADE UNION PERTAINING TO SUCH SKILLS OR CRAFT, AND THE BOARD MAY INCLUDE IN SUCH UNIT PERSONS WHO ACCORDING TO ESTABLISHED TRADE UNION PRACTICE ARE COMMONLY ASSOCIATED IN THEIR WORK AND BARGAINING WITH SUCH GROUP, BUT THE BOARD SHALL NOT BE REQUIRED TO APPLY THIS SUBSECTION WHERE THE GROUP OF EMPLOYEES IS INCLUDED IN A BARGAINING UNIT REPRESENTED BY ANOTHER BARGAINING AGENT AT THE TIME THE APPLICATION IS MADE, OR WHERE THE GROUP OF EMPLOYEES IS EXERCISING A COMBINATION OF TECHNICAL SKILLS OR IS REQUIRED TO PERFORM THE SKILLS IN WHOLE OR IN PART OF MORE THAN ONE CRAFT AS PART OF A WORK CREW OR TEAM, THE OTHER MEMBERS OF WHICH ARE ALSO REQUIRED TO PERFORM IN SIMILAR FASHION."

(EMPHASIS ADDED)

9. ACCORDINGLY, WE FIND THAT THE APPLICANT HAS BROUGHT ITSELF WITHIN THE MANDATORY PROVISIONS OF THE ABOVE QUOTED LEGISLATION SUCH THAT THE BOARD HAS NO ALTERNATIVE BUT TO FIND AS APPROPRIATE, THE BARGAINING UNIT AS PROPOSED BY THE APPLICANT.

10. HAVING REGARD TO THE FOREGOING, THE BOARD THEREFORE FINDS THAT ALL TAPMEN, BARTENDERS, BEVERAGE WAITERS, MALE AND FEMALE, BAR-BOYS AND IMPROVERS OF THE RESPONDENT AT THE THUNDERBIRD MOTOR HOTEL AT BRAMPTON, SAVE AND EXCEPT MANAGER AND PERSONS ABOVE THE RANK OF MANAGER, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

11. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD FURTHER FINDS THAT MARGARET CHARLES CLASSIFIED BY THE RESPONDENT AS "MANAGER - DINING & COCKTAIL LOUNGES", BILL KINGSHOT CLASSIFIED BY THE RESPONDENT AS "BEVERAGE ROOM MANAGER", JOE SOUSA CLASSIFIED BY THE RESPONDENT AS "MAINTENANCE WORKER" AND GORDON STRAIN CLASSIFIED BY THE RESPONDENT AS "KITCHEN WORK", ARE NOT INCLUDED IN THE SAID BARGAINING UNIT.

12. HAVING REGARD TO THE TOTALITY OF THE EVIDENCE CONCERNING THE DUTIES AND RESPONSIBILITIES OF DOMINIQUE LEVESQUE, CLASSIFIED BY THE



RESPONDENT AS "WAITRESS", WE FIND THAT SHE IS INCLUDED IN THE BARGAINING UNIT. ACCORDINGLY, HER NAME WILL BE ADDED TO THE LIST OF EMPLOYEES TO BE INCLUDED IN THE SAID BARGAINING UNIT AS AGREED TO BY THE PARTIES PURSUANT TO THE APPLICANT'S LETTER DATED NOVEMBER 30, 1972.

13. HAVING REGARD TO THE TOTALITY OF THE EVIDENCE, WE ARE SATISFIED THAT ALTHOUGH GEORGE MORAN DOES PERFORM SOME WORK NORMALLY PERFORMED BY EMPLOYEES IN THE SAID BARGAINING UNIT, SUCH WORK IS MERELY INCIDENTAL TO HIS PRIMARY MANAGERIAL FUNCTIONS. IN OUR OPINION, THEREFORE HIS FUNCTIONS, WHEN VIEWED AS A WHOLE, ARE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT. ACCORDINGLY, GEORGE MORAN IS NOT INCLUDED IN THE SAID BARGAINING UNIT.

14. HAVING REGARD TO THE TOTALITY OF THE EVIDENCE CONCERNING NEIL GRAVELY CLASSIFIED BY THE RESPONDENT AS "KITCHEN AND BAR", WE ARE SATISFIED THAT HIS COMMUNITY OF INTEREST, WHEN EMPLOYED IN A FULL-TIME CAPACITY, LIES MORE WITH THE KITCHEN STAFF AND ACCORDINGLY HE WOULD BE EXCLUDED FROM THE SAID BARGAINING UNIT. WE FURTHER FIND THAT MARGARET WALKER AND SUZANNE BOILEAU, EACH CLASSIFIED BY THE RESPONDENT AS "WAITRESSES", ESSENTIALLY CONSTITUTE PART OF THE DINING ROOM STAFF, AND WOULD THEREFORE, WHEN EMPLOYED IN A FULL-TIME CAPACITY, NOT BE INCLUDED IN THE SAID BARGAINING UNIT.

15. HOWEVER, THE EVIDENCE FURTHER DISCLOSES THAT THESE EMPLOYEES TOGETHER WITH OTHER EMPLOYEES IN THE KITCHEN OR DINING ROOM STAFF, IN ADDITION TO PERFORMING THEIR NORMAL FULL-TIME DUTIES, ALSO ARE INTERMITTENTLY EMPLOYED IN DUTIES NORMALLY PERFORMED BY EMPLOYEES IN THE SAID BARGAINING UNIT. IT WOULD FURTHER APPEAR HOWEVER, THAT THE PARTIES HAVE NOT GIVEN CONSIDERATION TO THIS MATTER.

16. ACCORDINGLY IN THESE CIRCUMSTANCES, MR. J. R. HENDERSON, EXAMINER, IS FURTHER AUTHORIZED TO INQUIRE INTO AND REPORT TO THE BOARD ON THE QUESTION AS TO WHETHER THE EMPLOYEES REFERRED TO IN PARAGRAPH 15, ARE APPROPRIATE FOR INCLUSION IN THE SAID BARGAINING UNIT ON THE BASIS THAT THEY FALL WITHIN THE CATEGORY OF PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK.

DECISION OF BOARD MEMBER F. W. MURRAY: JANUARY 24, 1973.

I DISSENT FOR REASONS TO BE GIVEN LATER IN WRITING.

2909-72-R: LABORERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL UNION No. 597 (APPLICANT) v. AARVI CONSTRUCTION COMPANY LIMITED (RESPONDENT).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS H. J. F. ADE AND E. BOYER.

DECISION OF THE BOARD:

JANUARY 25, 1973.

1. ON NOVEMBER 24, 1972, THE APPLICANT FILED THIS APPLICATION FOR CERTIFICATION AND CLAIMED THAT THE UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING CONSISTED OF ALL CONSTRUCTION LABOURERS IN THE COUNTIES OF PETERBOROUGH, VICTORIA AND THE PROVISIONAL COUNTY OF HALIBURTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN.

2. THE RESPONDENT IN ITS REPLY STATED THAT THERE WERE NO EMPLOYEES ON THE PAYROLL OF THE RESPONDENT IN THE GEOGRAPHIC AREA FOR WHICH THE APPLICATION HAD BEEN MADE.

. . .

4. THE RESPONDENT ADOPTED THE POSITION BEFORE THE EXAMINER THAT THERE WERE NO EMPLOYEES ON THE PAYROLL OF THE RESPONDENT IN THE GEOGRAPHIC AREA FOR WHICH THE APPLICATION HAD BEEN MADE. THE APPLICANT, ON THE OTHER HAND, STATED THAT THERE WERE FIFTEEN EMPLOYEES AT THE CONSTRUCTION SITE IN HAVELOCK IN THE EMPLOY OF THE RESPONDENT ON THE DATE OF THE MAKING OF THIS APPLICATION WHO WERE APPROPRIATE FOR THE INCLUSION IN THE BARGAINING UNIT CLAIMED TO BE APPROPRIATE BY THE APPLICANT.

5. THE APPLICANT FILED WITH THE EXAMINER TWO DOCUMENTS ENTITLED "UNEMPLOYMENT INSURANCE COMMISSION - SEPARATION CERTIFICATE" WITH RESPECT TO WILLIAM PAGE HART AND KENNETH BROWN. THESE TWO SEPARATION CERTIFICATES INDICATE THAT MR. HART FIRST WORKED FOR AARVI CONSTRUCTION CO. LTD. ON OCTOBER 18, 1972 AND THAT HE CEASED WORKING FOR THE LAST MENTIONED EMPLOYER ON NOVEMBER 11, 1972. THE SEPARATION CERTIFICATE WITH RESPECT TO KENNETH BROWN INDICATES THAT HE COMMENCED WORKING FOR AARVI CONST. CO. LTD. ON SEPTEMBER 25, 1972 AND THAT THE LAST DAY HE WORKED FOR THIS EMPLOYER WAS DECEMBER 7, 1972.

6. WITH RESPECT TO THESE TWO SEPARATION CERTIFICATES THE BOARD NOTES THAT MR. HART ALLEGEDLY CEASED WORKING FOR AARVI CONSTRUCTION CO. LTD. ON NOVEMBER 11, 1972 (ALMOST TWO WEEKS BEFORE THIS APPLICATION FOR CERTIFICATION WAS FILED). WHILE THE SEPARATION CERTIFICATE INDICATES THAT MR. BROWN WORKED FOR AARVI CONST. CO. LTD. BETWEEN SEPTEMBER 25, 1972 AND DECEMBER 7, 1972, IT DOES NOT, OF COURSE, INDICATE WHERE HE WAS WORKING, HIS OCCUPATIONAL CLASSIFICATION OR WHETHER HE WAS IN FACT AT WORK AT ALL ON NOVEMBER 24, 1972, THE DATE OF THE MAKING OF THIS APPLICATION FOR CERTIFICATION.

7. HAVING REGARD TO ALL OF THE EVIDENCE BEFORE IT, THE BOARD IS UNABLE TO FIND THAT THERE WAS ANY PERSON EMPLOYED BY THE RESPONDENT ON THE DATE OF THE MAKING OF THIS APPLICATION WHO WOULD COME WITHIN THE BARGAINING UNIT FOR WHICH THE APPLICANT IS SEEKING CERTIFICATION.

8. IN THE RESULT, THE BOARD FINDS, HAVING REGARD TO THE PROVISIONS OF SECTION 6(1) OF THE LABOUR RELATIONS ACT, THAT THERE IS NO APPROPRIATE BARGAINING UNIT AND THAT THIS APPLICATION IS ACCORDINGLY DISMISSED.

2761-72-R: JOAN ARRAND (APPLICANT) v. RETAIL, WHOLESALE, HOTEL AND RESTAURANT EMPLOYEES UNION, LOCAL 448, A.F. of L., C.I.O., C.C.L. (RESPONDENT) v. W. BOLEN ENTERPRISES LIMITED (INTERVENER).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND O. HODGES.

APPEARANCES AT THE HEARING: E. RICHMOND, Q.C., FOR THE APPLICANT; CLAYTON HUNTER FEE AND DONALD COLLINS FOR THE RESPONDENT; PAUL MAURICE LEDROIT FOR THE INTERVENER.

DECISION OF THE BOARD:

JANUARY 25, 1973.

1. THIS IS AN APPLICATION FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT IN WHICH THE BOARD DIRECTED THAT A REPRESENTATION VOTE BE TAKEN. ON THE TAKING OF THE REPRESENTATION VOTE ON DECEMBER 6, 1972, 77 EMPLOYEES OF THE INTERVENER CAST BALLOTS, 36 OF WHICH WERE CAST IN FAVOUR OF THE RESPONDENT AND 41 WERE CAST IN OPPOSITION TO THE RESPONDENT.

2. FOLLOWING THE TAKING OF THE REPRESENTATION VOTE THE RESPONDENT MADE CERTAIN ALLEGATIONS AGAINST THE INTERVENER WHEREIN THE RESPONDENT ALLEGED THAT THE INTERVENER HAD UNDULY INFLUENCED THE EMPLOYEES CONTRARY TO SECTION 56 OF THE LABOUR RELATIONS ACT AND ACCORDINGLY THE REPRESENTATION VOTE IN THIS MATTER DID NOT ACCURATELY REFLECT THE TRUE WISHES OF THE EMPLOYEES IN THIS MATTER. THE EVIDENCE RELIED UPON BY THE RESPONDENT IS THAT MR. BOLEN, ON BEHALF OF THE INTERVENER, DISTRIBUTED PAMPHLETS TO THE EMPLOYEES ON THE INTERVENER'S PREMISES ON FRIDAY, DECEMBER 1 AND COMPLETED THE DISTRIBUTION OF THE PAMPHLETS BY APPROXIMATELY 10:30 P.M. ON SATURDAY, DECEMBER 2 IMMEDIATELY PRIOR TO THE ONSET OF THE QUIET PERIOD WHICH PRECEDED THE VOTE IN THIS MATTER. THE PAMPHLET DISTRIBUTED ON BEHALF OF THE INTERVENER READS IN PART AS FOLLOWS:

4. IF YOU WISH A FORM OF UNION IS A PRIVATE EMPLOYEES ORGANIZATION AN ALTERNATIVE TO THE UNION?


5. WOULD YOUR RELATIONSHIP AND BUSINESS DEALINGS WITH US BE MORE HARMONIOUS AND ENJOYABLE WITH US IF THE UNION CONTINUED TO REPRESENT YOU?

LORNA AND I BELIEVE THAT THE ANSWERS TO THE QUESTIONS WE HAVE RAISED ARE QUITE CLEAR. WE ARE ATTACHING TO THIS LETTER A COPY OF THE FORM OF BALLOT AND HAVE INDICATED THEREON THE MANNER IN WHICH WE BELIEVE YOU SHOULD VOTE.

HOWEVER, WE WOULD AGAIN EMPHASIZE THAT THE FINAL DECISION IS YOUR DECISION ALONE TO MAKE AND SHOULD ONLY BE MADE AFTER YOU HAVE CAREFULLY CONSIDERED ALL THE ALTERNATIVES.



THE PAMPHLET ALSO INCLUDED A SPECIMEN BALLOT WHICH WAS TO BE USED IN THE REPRESENTATION VOTE WHICH WAS MARKED AS FOLLOWS:

<p align="center"><b>Mark "X" opposite your choice</b></p> <p align="center"><b>IN YOUR EMPLOYMENT RELATIONS WITH</b></p> <p align="center"><b>W. BOLEN ENTERPRISES LIMITED,</b></p> <p align="center"><b>DO YOU WISH TO BE REPRESENTED BY</b></p>		
<p>RETAIL, WHOLESALE, HOTEL AND RESTAURANT EMPLOYEES UNION, LOCAL 448, A.F. OF L., C.I.O., C.C.L.</p>	YES	
	NO	

3. HAVING CONSIDERED THE REPRESENTATIONS OF THE PARTIES WITH RESPECT TO THE ALLEGATIONS MADE BY THE RESPONDENT, WE FIND THAT THE INTERVENER HAS, IN ITEM 4 SET OUT ABOVE, INVITED THE EMPLOYEES TO FORM AN EMPLOYEES' ASSOCIATION TO REPRESENT THEM AS AN ALTERNATIVE TO THE UNION. AGAIN, IT IS INHERENT IN ITEM 5 THAT THE INTERVENER HAS PROMISED THAT ITS DEALINGS WITH THE EMPLOYEES WOULD BE MORE HARMONIOUS AND ENJOYABLE IF THE UNION NO LONGER REPRESENTED THEM. FINALLY, ALTHOUGH THE INTERVENER ACKNOWLEDGES THAT THE FINAL DECISION WAS ONE THAT THE EMPLOYEES HAD TO MAKE, THE INTERVENER ADVISED THE EMPLOYEES THAT THEY SHOULD ONLY MAKE THEIR DECISION AFTER CAREFULLY CONSIDERING ALL THE ALTERNATIVES WHICH WERE PROPOSED OR PROMISED BY THE INTERVENER AS SET OUT ABOVE.

4. AS HAS BEEN STATED IN THE PAST, THE MERE SUGGESTION THAT AN EMPLOYER WOULD LIKE TO SEE THE EMPLOYEES VOTE AGAINST A TRADE UNION OUGHT NOT TO SURPRISE ANYONE AND ACCORDINGLY CANNOT BE CONSTRUED AS UN-DUE INFLUENCE. HOWEVER, WHEN SUCH AN INVITATION TO VOTE AGAINST A UNION IS COUPLED WITH PROMISES BY AN EMPLOYER OR AN INVITATION FOR THE EMPLOYEES TO FORM AN INDEPENDENT ASSOCIATION OR JOIN ANOTHER TRADE UNION, THE CHARACTER OF THE SUGGESTION IS CHANGED AND WOULD TEND TO UNDULY INFLUENCE THE EMPLOYEES. THE ONLY CHOICE WHICH THE EMPLOYEE OUGHT TO CONSIDER IN A REPRESENTATION VOTE IS THE ONE SET OUT ON THE BALLOT. AS INDICATED ABOVE, THE CHOICE OFFERED TO THE EMPLOYEES WAS WHETHER OR NOT THEY WISHED TO BE REPRESENTED BY THE RESPONDENT UNION. BY SUB-

STITUTING A DIFFERENT CHOICE, I.E. AN ALTERNATIVE EMPLOYEES' ASSOCIATION, THE INTERVENER HAS THEREBY CHANGED THE NATURE OF THE REPRESENTATION VOTE. THIS CHANGE COUPLED WITH THE PROMISE THAT THE EMPLOYER-EMPLOYEE RELATIONSHIP WOULD BE IMPROVED IN THE ABSENCE OF THE RESPONDENT UNION IS SUFFICIENT TO CAUSE SERIOUS DOUBTS TO BE CAST UPON THE RESULTS OF THE REPRESENTATION VOTE IN THIS MATTER. THE BOARD THEREFORE FINDS THAT, BECAUSE OF THE MATERIAL PUBLISHED BY THE INTERVENER, THE REPRESENTATION VOTE CONDUCTED IN THIS MATTER IS NOT LIKELY TO CORRECTLY INDICATE THE TRUE WISHES OF THE EMPLOYEES WITH RESPECT TO THE ISSUE DIRECTED TO THEM IN THE REPRESENTATION VOTE. THE BOARD THEREFORE DIRECTS THAT THE REPRESENTATION VOTE BE SET ASIDE AND THAT ALL THE BALLOTS CAST IN THE REPRESENTATION VOTE SHOULD BE DESTROYED.

5. THE BOARD ACCORDINGLY DIRECTS THAT A NEW REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES OF THE INTERVENER. THOSE ELIGIBLE TO VOTE ARE ALL EMPLOYEES OF THE INTERVENER IN ITS RIDOUT TAVERN AT LONDON, SAVE AND EXCEPT MANAGER, PERSONS ABOVE THE RANK OF MANAGER, AND OFFICE STAFF ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN.

6. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BE REPRESENTED BY THE RESPONDENT IN THEIR EMPLOYMENT RELATIONS WITH THE INTERVENER.

7. THE MATTER IS REFERRED TO THE REGISTRAR.

8. THE PARTIES ARE CAUTIONED TO REFRAIN FROM ANY ACTIVITY WHICH MIGHT CONTRAVENE THE PROVISIONS OF THE LABOUR RELATIONS ACT WITH RESPECT TO THE CONDUCT OF THE REPRESENTATION VOTE IN THIS MATTER.

(INADVERTENTLY DELETED FROM THE MAY 1972 MONTHLY REPORT).

1688-71-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) AND ITS LOCAL 1256 (APPLICANT) V. J. A. WOTHERSPOON AND SON LIMITED WOTHERSPOON SALES LIMITED (RESPONDENTS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS H. ADE AND E. BOYER.

APPEARANCES AT THE HEARING: T. E. ARMSTRONG, F. KENNEY AND G. THOMSON FOR THE APPLICANT, H. M. PAYETTE AND D. SMITH FOR THE RESPONDENTS.

DECISION OF THE BOARD: MAY 8, 1972.

1. THE APPLICANT IS APPLYING TO THE BOARD UNDER SECTION 55 OF THE ACT FOR A DECLARATION THAT WOTHERSPOON SALES LIMITED IS BOUND BY A COLLECTIVE AGREEMENT BETWEEN J. A. WOTHERSPOON AND SON LIMITED AND THE INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPL-

MENT WORKERS OF AMERICA, U.A.W. AS A RESULT OF A SALE OF A BUSINESS BY J. A. WOTHERSPOON AND SON LIMITED TO WOTHERSPOON SALES LIMITED ALLEGED TO HAVE TAKEN PLACE ON OR ABOUT FEBRUARY 1, 1972.

2. AT THE OUTSET OF THE HEARING IN THIS MATTER COUNSEL FOR THE APPLICANT RESERVED HIS RIGHT AND IN FACT ARGUED IN THE ALTERNATIVE THAT THE BUSINESSES AND ACTIVITIES OF THE TWO COMPANIES ARE CARRIED ON UNDER COMMON CONTROL OR DIRECTION AND THAT ACCORDINGLY PURSUANT TO SECTION 1(4) OF THE ACT THE BOARD SHOULD TREAT THEM AS CONSTITUTING A SINGLE EMPLOYER FOR PURPOSES OF THE ACT. COUNSEL SUBMITS THAT IN THIS CIRCUMSTANCE THE BARGAINING RIGHTS HELD BY THE APPLICANT ARE BINDING ON THE BARGAINING UNIT EMPLOYEES OF BOTH J. A. WOTHERSPOON AND SON LIMITED AND WOTHERSPOON SALES LIMITED.

3. THE POSITION OF THE RESPONDENTS IS THAT THERE HAS NOT BEEN A SALE OF ANY PART OF THE BUSINESS OF J. A. WOTHERSPOON AND SON LIMITED TO WOTHERSPOON SALES LIMITED WITHIN THE MEANING OF SECTION 55 OF THE ACT AND THAT ACCORDINGLY THE COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE FORMER COMPANY IS NOT BINDING UPON ANY OF THE EMPLOYEES OF THE LATTER COMPANY.

4. THE RELEVANT EVIDENCE ADDUCED AT THE HEARING IS OUTLINED BELOW. J. A. WOTHERSPOON AND SON LIMITED WAS INCORPORATED AND COMMENCED TO CARRY ON BUSINESS AT ITS PLANT AT 148 CROSS AVENUE IN OAKVILLE IN THE FALL OF 1947. FROM THAT TIME UNTIL THE FALL OF 1970, J. A. WOTHERSPOON AND SON LIMITED WAS ENGAGED IN THE BUSINESS OF MANUFACTURING AND SELLING IRON CASTINGS, CAST IRON PIPE AND FITTINGS. THESE PRODUCTS WERE LARGELY SOLD TO WHOLESALERS OF PLUMBING AND HEATING SUPPLIES, CONTRACTORS AND MUNICIPALITIES. IN THE FALL OF 1970 J. A. WOTHERSPOON AND SON LIMITED DISCONTINUED MANUFACTURING CAST IRON PIPE AND FROM THAT TIME HAS BOUGHT ITS IRON PIPE FROM ST. CROIX FONDERIE LIMITEE, A COMPANY CARRYING ON BUSINESS IN THE PROVINCE OF QUEBEC. UNTIL EARLY THIS YEAR, ITS OWN EMPLOYEES LOOKED AFTER THE DISTRIBUTION AND SALE OF THE PRODUCTS OF J. A. WOTHERSPOON AND SON LIMITED INCLUDING THE PIPE WHICH IT PURCHASED FROM THE QUEBEC COMPANY.

5. JOHN A. WOTHERSPOON IS THE PRESIDENT AND TREASURER OF J. A. WOTHERSPOON AND SON LIMITED. HE OWNS ALL OF THE PREFERRED SHARES OF THE COMPANY AND IS THE SOLE PERSONS WITH ANY VOTING POWER IN ITS AFFAIRS. THE COMMON SHARES OF THE COMPANY ARE OWNED BY THE ESTATE OF HIS SON. AS OF THE BEGINNING OF THIS YEAR, ASIDE FROM ITS PRODUCTION OPERATIONS, J. A. WOTHERSPOON AND SON LIMITED HAD IN ITS EMPLOY ONE SHIPPER WHO LOOKED AFTER THE ENTIRE SHIPPING AND RECEIVING OPERATIONS OF THE COMPANY AND ONE TRUCK DRIVER WHO OPERATED TWO LEASED TRUCKS TO DISTRIBUTE THE COMPANY'S PRODUCTS. THE COMPANY ALSO HAD AN OFFICE STAFF COMPRISED OF FOUR EMPLOYEES, TWO OF WHOM HANDLED PURCHASE ORDERS AND TELEPHONE CALLS. THE OTHER TWO OFFICE EMPLOYEES LOOKED AFTER THE ACCOUNTS OF THE COMPANY. THE SHIPPER AND THE TRUCK DRIVER ARE IN CLASSIFICATIONS OF EMPLOYEES FALLING WITHIN THE SCOPE OF THE RECOGNITION CLAUSE OF THE MOST RECENT COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND J. A. WOTHERSPOON AND SON LIMITED.



6. ON FEBRUARY 1, 1972, WOTHERSPOON SALES LIMITED WAS ISSUED A CERTIFICATE OF INCORPORATION UNDER THE BUSINESS CORPORATION ACT. JOHN A. WOTHERSPOON IS THE PRESIDENT OF THE COMPANY AND THE VICE-PRESIDENT OF ADMINISTRATION IS ALSO THE MANAGER OF J. A. WOTHERSPOON AND SON LIMITED. THE VICE-PRESIDENT OF SALES AND THE TWO REMAINING DIRECTORS OF THE COMPANY ARE PRINCIPALS OF ST. CROIX FONDERIE LIMITÉE. THE ABOVE FIVE PERSONS HOLD ALL OF THE SHARES OF WOTHERSPOON SALES LIMITED IN EQUAL NUMBERS. THE NEW COMPANY OPERATES OUT OF THE SAME PREMISES AS J. A. WOTHERSPOON AND SON LIMITED AT 148 CROSS AVENUE IN OAKVILLE AND THE TWO COMPANIES SHARE A COMMON OFFICE STAFF. IT WOULD APPEAR FROM THE EVIDENCE THAT WOTHERSPOON SALES LIMITED, IN FACT, HAS NO PHYSICAL ASSETS. SINCE ITS INCORPORATION, WOTHERSPOON SALES LIMITED HAS BEEN RESPONSIBLE FOR THE DISTRIBUTION AND SALE OF IRON PIPE AND FITTINGS SUPPLIED BY ST. CROIX FONDERIE LIMITÉE. J. A. WOTHERSPOON AND SON LIMITED CONTINUES TO BE RESPONSIBLE FOR THE DISTRIBUTION AND SALE OF IRON CASTINGS. THE ABOVE ARRANGEMENT MADE BETWEEN J. A. WOTHERSPOON AND SON LIMITED AND WOTHERSPOON SALES LIMITED WITH RESPECT TO THE SALE AND DISTRIBUTION OF THE ABOVE PRODUCTS IS OF AN INFORMAL NATURE AND IS NOT CONTAINED IN ANY WRITTEN AGREEMENT.

7. THE SHIPPER WHO WAS EMPLOYED BY J. A. WOTHERSPOON AND SON LIMITED PRIOR TO THE INCORPORATION OF WOTHERSPOON SALES LIMITED LOOKS AFTER THE RECEIVING AND SHIPPING OF THE AFOREMENTIONED PRODUCTS OF BOTH COMPANIES. SIMILARLY, THE TRUCK DRIVER WHO WAS EMPLOYED BY J. A. WOTHERSPOON SALES LIMITED LOOKS AFTER THE DELIVERY OF THE PIPE, FITTINGS AND CASTINGS FOR THE TWO COMPANIES. THE SHIPPER AND TRUCK DRIVER, IN EFFECT, DO WORK FOR BOTH COMPANIES. THERE HAVE BEEN NO CHANGES IN THE DUTIES AND RESPONSIBILITIES OF EITHER THE SHIPPER OR THE TRUCK DRIVER SINCE THE INCORPORATION OF WOTHERSPOON SALES LIMITED OTHER THAN THAT BOTH ARE NOW PAID BY CHEQUES IN THE NAME OF THE NEW COMPANY. WITH THE EXCEPTION OF THE WORK PERFORMED BY THE SHIPPER AND TRUCK DRIVER WITH RESPECT TO THE PRODUCTS WHICH ARE RECORDED AGAINST WOTHERSPOON SALES LIMITED, NO OTHER PERSONS WHO WOULD FALL WITHIN THE SCOPE OF THE BARGAINING UNIT COVERED BY THE APPLICANT'S COLLECTIVE AGREEMENT DO ANY WORK FOR WOTHERSPOON SALES LIMITED.

8. BASED ON ALL OF THE EVIDENCE, IN OUR OPINION J. A. WOTHERSPOON AND SON LIMITED AND WOTHERSPOON SALES LIMITED CARRY ON THEIR BUSINESS ACTIVITIES UNDER SUCH COMMON CONTROL AND DIRECTION THAT THE BOARD, PURSUANT TO SECTION 1(4), DEEMS IT ADVISABLE TO TREAT THE TWO COMPANIES AS A SINGLE EMPLOYER FOR PURPOSES OF THE ACT. THE BARGAINING RIGHTS HELD BY THE APPLICANT PURSUANT TO ITS MOST RECENT COLLECTIVE AGREEMENT WITH J. A. WOTHERSPOON AND SON LIMITED ARE ACCORDINGLY BINDING UPON BOTH COMPANIES.

9. HAVING REGARD TO THE FOREGOING DETERMINATION, IT IS NOT NECESSARY FOR THE BOARD TO MAKE ANY DECLARATION PURSUANT TO SECTION 55 OF THE ACT.

(INADVERTENTLY DELETED FROM THE SEPTEMBER 1972 MONTHLY REPORT).

2166-72-R: UNITED PAPEWORKERS INTERNATIONAL UNION, (UPIU) AFL-CIO-CLC  
(APPLICANT) V. CAMERON PACKAGING INC. (RESPONDENT).

BEFORE: R.A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES AND  
F.W. MURRAY.

APPEARANCES AT THE HEARING: L.A. MACLEAN, GILBERT HAY AND CHRIS MONK  
FOR THE APPLICANT; MICHAEL GORDON AND HUGH CAMERON FOR THE RESPONDENT.

DECISION OF R.A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBER F.W. MURRAY:  
SEPTEMBER 11, 1972.

. . .

2. THIS APPLICATION FOR CERTIFICATION WAS FILED ON JUNE 22, 1972  
BY THE INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE AND PAPER MILL WORKERS.  
THE TERMINAL DATE FIXED FOR THIS APPLICATION WAS JUNE 30, 1972.

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5. IN A LETTER DATED AUGUST 18, 1972 AND RECEIVED BY THE BOARD ON  
AUGUST 21, 1972, GILBERT HAY A VICE-PRESIDENT OF THE UNITED PAPERWORKERS  
INTERNATIONAL UNION REQUESTED THE BOARD TO AMEND THE NAME OF THE APPLI-  
CANT UNION TO THE UNITED PAPERWORKERS INTERNATIONAL UNION. THE BOARD  
ENTERTAINED THIS REQUEST AT THE HEARING IN THIS MATTER ON AUGUST 30,  
1972.

6. HAVING REGARD TO THE SUBMISSIONS OF THE PARTIES THE NAME OF  
THE APPLICANT APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION IS  
AMENDED SO THAT THE NAME OF THE APPLICANT SHALL READ "UNITED PAPERWOR-  
KERS INTERNATIONAL UNION". MR. GILBERT HAY, A VICE-PRESIDENT OF THE  
UNITED PAPERWORKERS INTERNATIONAL UNION (AND FORMERLY A VICE-PRESIDENT  
OF THE PULP-SULPHITE UNION) AND MR. WILFRED OLIVER AN INTERNATIONAL  
REPRESENTATIVE OF THE UNITED PAPERWORKERS INTERNATIONAL UNION AND FOR-  
MERLY AN INTERNATIONAL REPRESENTATIVE OF THE UNITED PAPERWORKERS AND  
PAPERWORKERS (HEREINAFTER REFERRED TO AS THE "PAPERMAKERS UNION") GAVE  
EVIDENCE RESPECTING THE MERGER OF THE PAPERMAKERS UNION AND THE PULP-  
SULPHITE UNION TO FORM THE UNITED PAPERWORKERS INTERNATIONAL UNION.

7. THE EVIDENCE ESTABLISHED THAT SPECIAL MERGER CONVENTIONS WERE  
CALLED BY THE PULP-SULPHITE UNION AND THE PAPERMAKERS UNION DURING AU-  
GUST, 1972. THESE TWO ENTITIES HELD SEPARATE CONVENTIONS AT WHICH THE  
MERGER AGREEMENT BETWEEN THEM WAS DULY ADOPTED BY THE TWO SEPARATE UNIONS,  
THEREUPON THE CONSTITUTION OF THE UNITED PAPERWORKERS INTERNATIONAL UNION  
WAS APPROVED AND ADOPTED AT A CONVENTION HELD BY THAT ENTITY IN AUGUST,  
1972. AT THIS LATTER CONVENTION PERSONS WHO HAD HELD OFFICE IN THE  
PULP-SULPHITE UNION AND PAPERWORKERS UNION WERE SWORN INTO OFFICE AS  
OFFICERS OF THE NEW ENTITY, THE UNITED PAPERWORKERS INTERNATIONAL UNION.

8. UNDER QUESTIONING, MR. HAY INFORMED THE BOARD THAT THE PULP-SULPHITE UNION HAD CEASED TO EXIST ON AUGUST 9, 1972 AND THAT THE NEW ENTITY, NAMELY, THE UNITED PAPERWORKERS INTERNATIONAL UNION CAME INTO EXISTENCE ON THE SAME DATE.

9. HAVING REGARD TO THE EVIDENCE BEFORE US WE FIND THAT THE UNITED PAPERWORKERS INTERNATIONAL UNION IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.

10. THE EVIDENCE OF MEMBERSHIP FILED IN THIS APPLICATION INDICATES THAT CERTAIN EMPLOYEES OF THE RESPONDENT APPLIED FOR MEMBERSHIP IN THE PULP-SULPHITE UNION. IT IS CLEAR FROM THE EVIDENCE OF MR. HAY THAT THE EMPLOYEES WHO SIGNED APPLICATIONS FOR MEMBERSHIP IN THE PULP-SULPHITE UNION WERE NOT NOTIFIED OF THE MERGER, EITHER PENDING OR ACCOMPLISHED, AND THAT THERE WAS NO EVIDENCE BEFORE THE BOARD THAT SUCH EMPLOYEES INDICATED A DESIRE TO JOIN THE UNITED PAPERWORKERS INTERNATIONAL UNION. WHILE THERE IS SOME INDICATION IN THE DOCUMENTARY EVIDENCE BEFORE THE BOARD THAT THE PULP-SULPHITE UNION WAS TO CONTINUE IN EFFECT, THE EVIDENCE OF MR. HAY CLEARLY INDICATED THAT THE PULP-SULPHITE UNION DID NOT CONTINUE TO EXIST AFTER AUGUST 9, 1972. MR. HAY, IN FACT, REFERRED TO THE UNITED PAPERWORKERS INTERNATIONAL UNION AS A NEW UNION WITH A NEW CONSTITUTION.

11. THE EVIDENCE OF MEMBERSHIP FILED IN THIS APPLICATION RELATES TO APPLICATIONS TO JOIN THE PULP-SULPHITE UNION. AS OF JUNE 30, 1972, THE TERMINAL DATE OF THIS APPLICATION, THE UNITED PAPERWORKERS INTERNATIONAL UNION HAD NOT YET COME IN EXISTENCE. THEREFORE, AS OF JUNE 30, 1972, IT WAS CLEARLY IMPOSSIBLE TO INTERPRET THE EVIDENCE OF MEMBERSHIP FILED IN THIS APPLICATION AS EVIDENCE OF MEMBERSHIP IN THE UNITED PAPERWORKERS INTERNATIONAL UNION. HAVING REGARD TO ALL OF THE EVIDENCE BEFORE US WE ARE NOT SATISFIED THAT THE EVIDENCE OF MEMBERSHIP FILED IN THIS APPLICATION IS EVIDENCE OF MEMBERSHIP IN THE UNITED PAPERWORKERS INTERNATIONAL UNION.

12. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT IN EAST GWILLIMBURY SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

13. WE ARE SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE US THAT LESS THAN THIRTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JUNE 30, 1972, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

14. IN THE RESULT, THIS APPLICATION IS DISMISSED.



DECISION OF BOARD MEMBER O. HODGES: SEPTEMBER 11, 1972.

1. IN THE MATTER OF ESTABLISHING THE STATUS OF THE UNITED PAPERWORKERS INTERNATIONAL UNION, I CONCUR WITH THE MAJORITY.

2. I DISSENT IN THE MATTER OF THE MEMBERSHIP EVIDENCE. IN THE CIRCUMSTANCES OF THIS CASE I WOULD HAVE ACCEPTED THE CARDS MADE OUT IN THE NAME OF ONE OF THE PARTIES TO THE MERGER. THE RESULT OF THE MERGER CAN ONLY BE TO BUTTRESS THE BARGAINING POSITION OF THE MEMBERS OF ALL OF THE PARTIES TO THE MERGER. THE MEMBERS OF THE ORIGINAL APPLICANT WOULD BE MORE SECURE IN THEIR BARGAINING AGENT SINCE IT IS NOW FAR MORE REPRESENTATIVE OF THE INDUSTRY.

3. AS THE ALTERNATIVE TO DISMISSAL, IN MY OPINION, THE BOARD COULD HAVE ORDERED A VOTE IN THE BARGAINING UNIT FOUND AT THE HEARING, GIVING THE EMPLOYEES AN OPPORTUNITY TO VOTE FOR OR AGAINST THE MERGED ORGANIZATION. I WOULD HAVE JOINED IN SUCH A FINDING.

2522-72-M: BEAVER ENGINEERING LIMITED (EMPLOYER) v. INTERNATIONAL MOLDERS' AND ALLIED WORKERS' UNION AFL. CIO. CLC. (TRADE UNION).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS F.W. MURRAY AND P.J. O'KEEFE.

APPEARANCES AT THE HEARING: W. MICHAEL TEMPLE AND E.J. KELLEY FOR THE EMPLOYER; TED WOHL FOR THE TRADE UNION.

DECISION OF THE BOARD: JANUARY 26, 1973.

1. THIS IS A REFERENCE PURSUANT TO SECTION 96 OF THE LABOUR RELATIONS ACT WHEREIN THE MINISTER OF LABOUR HAS REFERRED TO THIS BOARD THE QUESTION AS TO WHETHER HE HAS THE AUTHORITY UNDER THE LABOUR RELATIONS ACT TO APPOINT A CONCILIATION OFFICER.

2. THE QUESTION REFERRED INVOLVES THE ISSUE AS TO WHETHER A BUSINESS HAS BEEN SOLD BY ONE EMPLOYER TO ANOTHER AND THE FACTS ARE AS FOLLOWS: BENNETT & WRIGHT LIMITED CARRIED ON BUSINESS AS A WHOLESALE. IT HAD A COLLECTIVE AGREEMENT WITH THE INTERNATIONAL MOLDERS' AND ALLIED WORKERS' UNION AFL. CIO. CLC. (HEREINAFTER REFERRED TO AS THE "MOLDERS"). BENNETT & WRIGHT LIMITED WAS DEEMED TO HAVE MADE AN ASSIGNMENT TO BANKRUPTCY PURSUANT TO THE BANKRUPTCY ACT AS OF MARCH 28, 1972. THE CLARKSON COMPANY LIMITED WAS APPOINTED THE RECEIVER AND MANAGER OF THE ASSETS OF BENNETT & WRIGHT LIMITED AND ON APRIL 28, 1972, IT NOTIFIED THE EMPLOYEES THAT THEIR EMPLOYMENT WOULD BE TERMINATED.

3. ROBERT WILLIAM DAVIS HAD BEEN EMPLOYED AS A TRUCK DRIVER FOR APPROXIMATELY THREE AND A HALF YEARS BY BENNETT & WRIGHT LIMITED AT ITS PLANT AT 45 CRANFIELD ROAD, IN THE MUNICIPALITY OF METROPOLITAN TORONTO. HE WAS GIVEN NOTICE THAT HIS EMPLOYMENT WOULD TERMINATE ON FRIDAY, MAY

12, 1972, and on May 15, 1972, he commenced employment at BEAVER ENGINEERING LIMITED. THE BUSINESS OF BEAVER ENGINEERING LIMITED WAS CARRIED ON AT THE SAME PREMISES WHERE BENNETT & WRIGHT LIMITED HAD FORMERLY CARRIED ON ITS BUSINESS. WHEN MR. DAVID REPORTED FOR WORK ON MONDAY, MAY 15, 1972, OSTENSIBLY FOR BEAVER ENGINEERING LIMITED, HE PUNCHED THE SAME TIME CARD AS HE HAD PUNCHED ON THE FRIDAY WHEN HE HAD TERMINATED HIS EMPLOYMENT WITH BENNETT & WRIGHT LIMITED. THOSE TIME CARDS WERE EVENTUALLY CHANGED.

4. HE TESTIFIED THAT THE MACHINERY AND EQUIPMENT WHICH HAD BEEN USED BY BENNETT & WRIGHT LIMITED IN ITS PIPE FITTING AND PLUMBING WHOLE-SALE WAS USED BY BEAVER ENGINEERING LIMITED. IN ADDITION, WHEN MR. DAVIS MADE HIS DELIVERIES HE WENT TO THE SAME CUSTOMERS AND DELIVERED THE SAME MATERIAL THAT HE HAD PREVIOUSLY DELIVERED WHEN HE WAS EMPLOYED FOR BENNETT & WRIGHT LIMITED. HE ALSO DROVE THE SAME TRUCK. THERE WERE THE SAME SUPERVISORY PERSONNEL AND A NUMBER OF THE EMPLOYEES WHO HAD FORMERLY WORKED FOR BENNETT & WRIGHT LIMITED ALSO COMMENCED TO WORK FOR BEAVER ENGINEERING LIMITED. WHEN MR. DAVIS ENTERED THE PREMISES THE TELEPHONE SYSTEM WAS THE SAME, I.E., THE SAME SWITCHBOARD WAS USED AND THE SAME GIRL WAS AT THE SWITCHBOARD. MR. DAVIS ALSO TESTIFIED THAT A LETTER WENT OUT FROM BEAVER ENGINEERING LIMITED TO THE CUSTOMERS OF BENNETT & WRIGHT LIMITED TO ADVISE THEM THAT THE PRODUCTS THAT HAD FORMERLY BEEN AVAILABLE FOR BENNETT & WRIGHT LIMITED WERE PRESENTLY AVAILABLE AT BEAVER ENGINEERING LIMITED. HE DID ADMIT THAT THERE WERE SOME CHANGES IN THE PRODUCTS THAT WERE BEING MANUFACTURED AND HE DID ADMIT THAT WHILE THE MAJORITY OF CUSTOMERS WERE BENNETT & WRIGHT LIMITED CUSTOMERS THERE WERE SOME NEW CUSTOMERS. HIS SUPERVISOR, BOTH ON MAY 12TH AND MAY 15TH, WAS THE SAME NOTWITHSTANDING THAT HIS EMPLOYER HAD CHANGED. BEAVER ENGINEERING LIMITED CHOSE NOT TO CALL ANY EVIDENCE.

5. THE FACTS OF THIS CASE ARE BASED WHOLLY ON THE KNOWLEDGE OF AN EMPLOYEE WHO WORKED FOR BOTH BENNETT & WRIGHT LIMITED AND SUBSEQUENTLY FOR BEAVER ENGINEERING LIMITED. THERE IS NO EVIDENCE AS TO THE ACTUAL TRANSACTION BETWEEN BENNETT & WRIGHT LIMITED AND BEAVER ENGINEERING LIMITED. THIS CASE RAISES THE ISSUE THAT HAS BEEN MOOTED IN A NUMBER OF SALE OF BUSINESS CASES BEFORE THIS BOARD AND THAT IS AS TO THE NATURE OF THE EVIDENCE THAT MUST BE ADDUCED BY THE UNION BEFORE THE RESPONDENT EMPLOYER IS REQUIRED TO ADDUCE EVIDENCE. THIS BOARD HAS MADE A DISTINCTION BETWEEN THE ONUS OF PROOF AND THE BURDEN OF ADDUCING EVIDENCE ALTHOUGH IT HAS NOT INDICATED WHAT FACTS ARE NECESSARY BEFORE THE BURDEN OF ADDUCING EVIDENCE SHIFTS FROM THE UNION TO THE EMPLOYER.

6. THE LABOUR RELATIONS ACT AND THE PROCEDURES BEFORE THIS BOARD HAVE DEVELOPED SO AS TO FACILITATE MATTERS OF LABOUR RELATIONS AND TO PROVIDE A PROCEDURE WHERE PERSONS OTHER THAN LAWYERS MAY APPEAR, SEE E.G., SUN PARLOUR GREENHOUSE GROWERS' CO-OPERATIVE LIMITED, ARMSTRONG PRODUCT COMPANY LIMITED, A.M.C. PRODUCE SHIPPERS INCORPORATED, MASTRONARDI PRODUCE LIMITED, GARDEN ACRE SALES AN AGENCY OF ONTARIO GREENHOUSE PRODUCERS MARKETING BOARD (1971) NOVEMBER OLRB MTHLY. REP. 743. THE BOARD IS NOT DESIROUS OF ENCUMBERING ITS PROCEEDINGS WITH UNNECES-

SARY INTERIM OR PRE-TRIAL PROCEDURES AND ACCORDINGLY IT IS PREFERABLE THAT PRIOR TO THE HEARING THE PARTIES SHOULD ADMIT TO AS MUCH INFORMATION AS POSSIBLE. WHERE A PARTY REFUSES TO GIVE UP INFORMATION IT IS ALWAYS OPEN TO THE OTHER PARTY TO SUBPOENA RECORDS AND TO SUBPOENA ALL PERSONS WHO MAY HAVE SOME KNOWLEDGE ABOUT THE PARTICULAR FACTS. IN THE CASE WHERE THERE IS A SALE OF BUSINESS IT WOULD, OF COURSE, BE OPEN TO A UNION DESIRING RELIEF TO SUBPOENA ALL THE OFFICERS OR SHAREHOLDERS OR ALL THE PRINCIPALS THAT MIGHT BE INVOLVED IN A PARTICULAR TRANSACTION, TOGETHER WITH ALL THE BOOKS AND RECORDS THAT MIGHT INDICATE THE NATURE OF A TRANSACTION. THIS IS A CUMBERSOME PROCEDURE, BUT, IF NECESSARY THE BOARD WILL GRANT SUBPOENAS IN ORDER THAT ALL THE FACTS MAY PROPERLY BE ADDUCED. UNDOUBTEDLY, SUCH A PROCEDURE WOULD TO SOME EXTENT TURN INTO A FISHING EXPEDITION, BUT ABSENT THE USUAL PRE-TRIAL PROCEDURES IT MAY BE NECESSARY THAT IN CASES OF THIS SORT ALLOWANCES BE MADE FOR SUCH A PROCEDURE.

7. THE CASE BEFORE US IS A CLASSIC SITUATION WHERE A PERSON IS EMPLOYED BY ONE COMPANY AND THEN HIS EMPLOYMENT TERMINATED AND HE IS PLACED WITH ANOTHER COMPANY. TO THAT EMPLOYEE THE COMPANIES APPEAR THE SAME. HAVING BEEN INITIALLY INVOLVED WITH BENNETT & WRIGHT LIMITED THE EMPLOYEE IS PLACED IN THE POSITION WHERE THERE ARE STRIKING SIMILARITIES BETWEEN HIS FORMER EMPLOYMENT AND HIS PRESENT EMPLOYMENT. HIS SUPERVISORS ARE THE SAME, MANY OF HIS FELLOW EMPLOYEES ARE THE SAME, THE PRODUCTS OF THE COMPANY ARE THE SAME, THE MACHINERY AND EQUIPMENT ARE THE SAME AND THE MAJORITY OF THE CUSTOMERS ARE ALSO THE SAME. IT IS TO THE EMPLOYEE MORE THAN A MERE COINCIDENCE AND IT IS TO US ALSO MORE THAN A MERE COINCIDENCE.

8. IN ARRIVING AT OUR DECISION IT MUST BE REMEMBERED THAT ONE OF THE PURPOSES OF SECTION 55 OF THE LABOUR RELATIONS ACT HAS BEEN TO PRESERVE BARGAINING RIGHTS. IN THE THORCO MANUFACTURING LTD. CASE 65 CLLC ¶16,052 AT P. 787 THE BOARD STATED:

"IT IS MANIFEST THAT THE OBJECT SOUGHT TO BE ATTAINED BY S47A (PRESENTLY SECTION 55) OF THE ACT IS TO MAINTAIN AND CONTINUE THE BARGAINING RIGHTS OF A UNION FOR THE EMPLOYEES IN THE BARGAINING UNIT REPRESENTED BY IT, WHEN THE BUSINESS OR THE PART OR PARTS THEREOF IN WHICH SUCH EMPLOYEES ARE EMPLOYED IS SOLD (WHICH TERM IS ALSO BY THE SECTION MADE TO INCLUDE LEASED, TRANSFERRED OR OTHERWISE DISPOSED OF) TO ANOTHER EMPLOYER..."

SEE ALSO AIRCRAFT METAL SPECIALTIES LTD. (1970) SEPTEMBER OLRB MTHLY. REP. 702; E.G. KEM'S MASONRY (1964) DECEMBER OLRB MTHLY. REP. 382; TRENTON RIVERSIDE DAIRY PRODUCTS (1964) 2 C.L.S. 76-1005.

9. BEARING IN MIND THE PURPOSE OF THE ACT WE ARE OF THE OPINION THAT THESE PARTICULAR CIRCUMSTANCES REQUIRE AN EXPLANATION FROM THE RE-



SPONDENT, BEAVER ENGINEERING LIMITED. WHILE THE ONUS RESTS ON AN APPLICANT TO PRODUCE BEFORE THE BOARD THE ESSENTIAL EVIDENCE UPON WHICH IT RELIES; SUPER CITY DISCOUNT (1964) MAY OLRB MTHLY. REP. 93; WE ARE SATISFIED THAT THERE IS SUFFICIENT EVIDENCE IN THIS CASE THAT REQUIRES THE RESPONDENT TO ADDUCE EVIDENCE THAT THE TRANSACTION BETWEEN BEAVER ENGINEERING LIMITED AND BENNETT & WRIGHT LIMITED WAS NOT A SALE OF BUSINESS WITHIN THE MEANING OF THE LABOUR RELATIONS ACT; COMPARE WOODWAY STRUCTURAL COMPONENTS (1971) AUGUST OLRB MTHLY. REP. 545.

10. FURTHER, THE GENERAL MANAGER OF BEAVER ENGINEERING LIMITED WAS PRESENT AT THE HEARING. THE FAILURE TO PRODUCE HIM AS A WITNESS OR EXPLAIN THE CIRCUMSTANCES PERMITS THIS BOARD TO DRAW THE INFERENCE THAT THE UNPRODUCED EVIDENCE WOULD BE CONTRARY TO THE EMPLOYER'S CASE, OR AT LEAST WOULD NOT SUPPORT IT; MURRAY V. SASKATOON (1952) 2 D.L.R. 499 AT 505 (SASK. CT. OF APP.), AND SINCE THE CIRCUMSTANCES SURROUNDING THE TRANSACTIONS WERE ENTIRELY WITHIN THE KNOWLEDGE OF THE EMPLOYER THEY CANNOT COMPLAIN IF THE INFERENCES DRAWN FROM THE ESTABLISHED FACTS ARE NOT FAVOURABLE TO THEM; BUSUTTIL V. DIAMOND T. TRUCKS (TORONTO) LTD. ET AL (1969) 2 D.L.R. (3RD) 167 AT 168 (ONT. CT. OF APP.).

11. IN THE CIRCUMSTANCES OF THIS CASE AND CONSIDERING THAT THERE ARE EMPLOYEES AT BEAVER ENGINEERING LIMITED WHO WERE NOT REPRESENTED BY THE TRADE UNION, THE BOARD FEELS THAT IN THIS CASE IT WOULD BE APPROPRIATE TO ORDER A REPRESENTATION VOTE.

12. THE BOARD FINDS THAT ALL EMPLOYEES OF THE EMPLOYER AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE EMPLOYER APPROPRIATE FOR COLLECTIVE BARGAINING.

13. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE EMPLOYER IN THE BARGAINING UNIT PURSUANT TO SECTION 55(8) OF THE LABOUR RELATIONS ACT. ALL EMPLOYEES OF THE EMPLOYER IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

14. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BE REPRESENTED BY THE TRADE UNION IN THEIR EMPLOYMENT RELATIONS WITH THE EMPLOYER.

15. THE MATTER IS REFERRED TO THE REGISTRAR.

2010-72-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL UNION No. 91 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. COMPAGNIE MIRON LTEE (RESPONDENT) V. UNITED CEMENT, LIME & GYPSUM WORKERS INTERNATIONAL UNION LOCAL 384 (INTERVENER).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND H.J.F. ADE.

DECISION OF THE BOARD:

JANUARY 29, 1973.

1. IN THIS MATTER THE RESPONDENT BY ITS SOLICITORS REQUESTED AN OPPORTUNITY TO PRESENT FULL EVIDENCE AND ARGUMENT IN SUPPORT OF A REQUEST FOR RECONSIDERATION WITH RESPECT TO THE JURISDICTION OF THE BOARD TO DEAL WITH THIS APPLICATION.
2. AT THE HEARING THE BOARD RAISED THE ISSUE OF JURISDICTION WITH THE PARTIES. FULL OPPORTUNITY TO PRESENT EVIDENCE AND ARGUMENT IN SUPPORT OF THE ISSUE OF JURISDICTION WAS GRANTED AT THE HEARING. IN ADDITION, THE BOARD ADVISED THE PARTIES THAT IF IT WISHED TO SUBMIT WRITTEN ARGUMENT WITHIN TEN DAYS OF THE HEARING IT WOULD ENTERTAIN SUCH ARGUMENT. NO ARGUMENT WAS SUBMITTED IN CONNECTION THEREWITH.
3. AS NOTED IN OUR DECISION, AT THE HEARING THE PARTIES INDICATED THAT THEY HAD COME TO THE ONTARIO DEPARTMENT OF LABOUR FOR CONCILIATION SERVICES, WHICH SUGGESTS THAT THEY HAD ATTORNEED TO THIS JURISDICTION. FURTHER, THE INFERENCE TO BE DRAWN FROM THE ARGUMENT SUBMITTED AT THE HEARING WAS THAT THE PARTIES HAD NO OBJECTION TO THIS BOARD ASSERTING ITS JURISDICTION.
4. HOWEVER, THE BOARD WISHES TO POINT OUT THAT THE RESPONDENT DOES NOT CARRY ON A TRUCKING OPERATION AND THAT ITS OPERATION IS ESSENTIALLY A MANUFACTURING OPERATION, AND IT MAINTAINS A TERMINAL FACILITY AT OTTAWA WHERE IT STORES CEMENT FROM WHICH IT MAKES DELIVERIES. THE OTTAWA TERMINAL IS LOCATED IN ONTARIO AND IS AN ANCILLARY TO THE MAIN MANUFACTURING OPERATION.
5. THE BOARD DOES NOT SEEK TO ASSERT JURISDICTION OVER THE ACTIVITIES OF THE RESPONDENT WHICH ARE NOT WITHIN ONTARIO. THE BOARD SEEKS TO ASSERT JURISDICTION OVER THE ANCILLARY OPERATION ONLY INsofar AS IT RELATES TO THE PROVINCE OF ONTARIO.
6. FOR ALL THESE REASONS THE REQUEST BY THE SOLICITORS FOR THE RESPONDENT FOR A HEARING AND AN OPPORTUNITY TO PRESENT FULL EVIDENCE AND ARGUMENT IN SUPPORT OF THE REQUEST FOR RECONSIDERATION IS DENIED. THE PARTIES ARE DIRECTED TO COMPLY WITH THE DECISION OF THE BOARD DATED DECEMBER 19, 1972.

2219-72-R: LUMBER AND SAWMILL WORKERS' UNION, LOCAL 2995 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) v. ARROW TIMBER COMPANY LIMITED (RESPONDENT).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: J. C. ARNOLD AND R. BRIKHE FOR THE APPLICANT; F. R. VON VEK, R. A. CLOUTIER AND R. KARDY FOR THE RESPONDENT.

DECISION OF VICE-CHAIRMAN FRANK V. BOSCARIOL AND BOARD MEMBER O. HODGES:  
JANUARY 29, 1973.

1. PURSUANT TO THE DECISION OF THE BOARD DATED OCTOBER 3, 1972, A REPRESENTATION VOTE WAS CONDUCTED IN THIS MATTER CULMINATING IN THE REPORT OF THE RETURNING OFFICER HEREIN DATED OCTOBER 30, 1972. BY DECISION OF THE BOARD DATED NOVEMBER 6, 1972, THE REGISTRAR WAS DIRECTED TO LIST THIS MATTER FOR CONTINUATION OF HEARING SO AS TO ENABLE THE PARTIES TO MAKE REPRESENTATIONS WITH RESPECT TO THE CONCLUSIONS TO BE DRAWN FROM THE SAID REPORT OF THE RETURNING OFFICER.

2. AT THE SUBSEQUENT HEARING OF THIS MATTER ON DECEMBER 13, 1972, THE APPLICANT INITIALLY QUESTIONED THE PROPRIETY OF THE DETERMINATION OF THE RETURNING OFFICER CONCERNING TWO SPOILED BALLOTS AS APPEARS IN HIS REPORT.

3. THE FIRST OBJECTION IN THIS REGARD CONCERNS A BALLOT, THE BACK PORTION OF WHICH BEARS A HANDWRITTEN STATEMENT SIGNED BY MESSRS. FONTAINE AND VON VEK, THE RESPECTIVE AGENTS FOR THE APPLICANT AND RESPONDENT, AT THE COUNT. THIS STATEMENT PROVIDES AS FOLLOWS:

"APPLICANT AND RESPONDENT BOTH AGREE THAT  
THIS BALLOT IS A SPOILED BALLOT."

4. HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES, THE BOARD IS NOT PREPARED IN THESE CIRCUMSTANCES TO PERMIT THE APPLICANT TO UNILATERALLY REPUDIATE ITS AGREEMENT WITH RESPECT TO THE DISPOSITION OF THIS BALLOT. TO DO SO, IN OUR OPINION, WOULD HAVE THE EFFECT OF MAKING PROCEEDINGS BEFORE THIS BOARD INTERMINABLE AND INCONCLUSIVE, AND NOT CONDUCTIVE TO THE BEST INTERESTS OF LABOUR RELATIONS. (IN THIS REGARD, SEE THE UNIVERSITY OF WINDSOR CASE [1971] OLRB REP., P. 344; THE BELCOURT CONSTRUCTION (OTTAWA) CASE OLRB M.R. DECEMBER 1970, P. 944; CONTINENTAL CAN COMPANY OF CANADA LIMITED CASE [1971] OLRB REP., P. 269). ACCORDINGLY, IT WILL NOT BE NECESSARY IN THESE CIRCUMSTANCES, FOR THE BOARD TO MAKE A RULING CONCERNING THE PROPRIETY OF THE MARKINGS AS APPEARS ON THE FACE OF THIS BALLOT. IN VIEW OF THIS FINDING, MOREOVER, IT WILL NOT BE NECESSARY TO DEAL WITH THE RESPONDENT'S CHALLENGE REGARDING THE SECOND BALLOT RULED SPOILED BY THE RETURNING OFFICER, SINCE IN ANY EVENT, ANY DETERMINATION BY THE BOARD, HAVING REGARD TO THE CONCLUSIONS REACHED IN THIS DECISION, COULD NOT REDUCE THE APPLICANT'S MAJORITY POSITION AS DETERMINED UNDER SECTION 7(3) OF THE LABOUR RELATIONS ACT.

5. THE RESULTS OF THE SAID REPORT OF THE RETURNING OFFICER ARE SUMMARIZED AS FOLLOWS:

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NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	39
NUMBER OF PERSONS WHO CAST BALLOTS	38
NUMBER OF SPOILED BALLOTS	2
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	19
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	17

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6. IN THIS REGARD, IT IS THE SUBMISSION OF THE RESPONDENT, INTER ALIA, THAT THERE WERE 38 BALLOTS "CAST" IN THE REPRESENTATION VOTE AND THAT AS THE APPLICANT RECEIVED ONLY 19 VOTES IN ITS FAVOUR, IT THEREFORE DID NOT OBTAIN "MORE THAN 50 PER CENT OF THE BALLOTS CAST" AS REQUIRED BY SECTION 7(3) OF THE LABOUR RELATIONS ACT AND, ACCORDINGLY, THE APPLICATION MUST BE DISMISSED. THE APPLICANT, ON THE OTHER HAND, TAKES THE POSITION, INTER ALIA, THAT THE TWO SPOILED BALLOTS ARE VOID AND AS SUCH DO NOT CONSTITUTE BALLOTS "CAST". IF THE BOARD WERE TO ACCEPT THIS POSITION, THE APPLICANT WOULD HAVE OBTAINED 19 OF THE 36 BALLOTS CAST SO THAT THE APPLICANT WOULD BE ENTITLED TO CERTIFICATION PURSUANT TO THE PROVISIONS OF SECTION 7(3) OF THE LABOUR RELATIONS ACT.

7. EFFECTIVE FEBRUARY 15, 1971, THE RELEVANT PORTIONS OF SECTION 7(3) OF THE ACT (SEE SECTION 5, THE LABOUR RELATIONS AMENDMENT ACT, 1970, (No. 2) S.O. 1970 c. 85), PROVIDE AS FOLLOWS:

"IF ON THE TAKING OF A REPRESENTATION VOTE MORE THAN 50 PER CENT OF THE BALLOTS CAST ARE CAST IN FAVOUR OF THE TRADE UNION, AND IN OTHER CASES, IF THE BOARD IS SATISFIED THAT MORE THAN 65 PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT ARE MEMBERS OF THE TRADE UNION, THE BOARD SHALL CERTIFY THE TRADE UNION AS THE BARGAINING AGENT OF THE EMPLOYEES IN THE BARGAINING UNIT."

(UNDERLINING ADDED)

PRIOR TO THE TIME OF THIS AMENDMENT, THE RELEVANT LEGISLATION PROVIDED:

"IF ON THE TAKING OF A REPRESENTATION VOTE MORE THAN 50 PER CENT OF THE BALLOTS OF ALL THOSE ELIGIBLE TO VOTE ARE CAST IN FAVOUR OF THE TRADE UNION, AND IN OTHER CASES, IF THE BOARD IS SATISFIED THAT MORE THAN 55 PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT ARE MEMBERS OF THE TRADE UNION, THE BOARD SHALL CERTIFY THE TRADE UNION AS THE BARGAINING AGENT OF THE EMPLOYEES IN THE BARGAINING UNIT."

(UNDERLINING ADDED)

IT IS CONCEDED BY THE PARTIES THAT THE AMENDMENT WAS DESIGNED TO RELIEVE TRADE UNIONS FROM BEING PENALIZED IN THE CASE WHERE AN ELIGIBLE EMPLOYEE DID NOT EXERCISE HIS FRANCHISE, WHICH IN EFFECT WOULD RESULT IN A "VOTE" AGAINST THE TRADE UNION. NOW THE TRADE UNION NEED ONLY OBTAIN A MAJORITY OF THE "VOTES" CAST WHEREAS FORMERLY IT HAD TO OBTAIN A MAJORITY OF THE BALLOTS OF ALL THE EMPLOYEES IN THE BARGAINING UNIT ELIGIBLE TO VOTE.

8. ACCORDINGLY, THE ISSUE AS TO WHETHER A SPOILED BALLOT SHOULD BE INCLUDED IN THE NUMBER OF "BALLOTS CAST" ONLY BECOMES RELEVANT AT THE TIME OF ADOPTION OF THE NEW LEGISLATION AS SET OUT ABOVE. IT WOULD APPEAR THAT THIS ISSUE HAS BEEN DIRECTLY RAISED FOR THE FIRST TIME ONLY DURING THESE PROCEEDINGS. HOWEVER, COUNSEL FOR THE RESPONDENT DREW TO THE ATTENTION OF THE BOARD THE GEO. CLUTHE MANUFACTURING CO. LIMITED CASE [1971] OLRB REP. P. 51 WHERE THE BOARD DISMISSED AN APPLICATION FOLLOWING THE TAKING OF A PRE-HEARING REPRESENTATION VOTE ON THE BASIS THAT THE APPLICANT HAD OBTAINED NOT MORE THAN FIFTY PER CENT OF THE BALLOTS CAST. IT WAS ARGUED THAT THIS CONCLUSION COULD ONLY HAVE BEEN REACHED AFTER THE BOARD HAD DEDUCTED THE 5 SPOILED BALLOTS IN THAT CASE FROM THE 109 "BALLOTS CAST", TO WHICH THE 54 BALLOTS MARKED IN FAVOUR OF THE APPLICANT TRADE UNION WERE THEN APPLIED.

9. IT HAS BEEN THE CONSISTENT PRACTICE OF THIS BOARD, THAT ONE DIVISION OF THE BOARD WILL NOT SIT ON APPEAL ON A DECISION FROM ANOTHER DIVISION OF THE BOARD DIFFERENTLY CONSTITUTED. FURTHER, A REVIEW OF THE GEO. CLUTHE MANUFACTURING CO. LIMITED CASE (SUPRA) INDICATES THE DATE OF THE FILING OF THE APPLICATION AS FEBRUARY 19, 1971, ONLY FOUR DAYS AFTER THE NEW LEGISLATION BECAME EFFECTIVE. THERE WOULD FURTHER APPEAR TO HAVE BEEN NO OBJECTIONS TO THE BOARD'S DECISION IN THIS REGARD NOR WAS THERE ANY REQUEST FOR RECONSIDERATION. IN ANY EVENT; IT WOULD APPEAR THAT THE ISSUE NOW BEFORE US WAS NOT RAISED IN THE LATTER CASE, WHICH DECISION HAVING REGARD TO THE NATURE OF THESE PROCEEDINGS, WAS RENDERED WITHOUT A HEARING. HAVING REGARD TO ALL OF THESE CIRCUMSTANCES, WE ARE NOT PREPARED TO ACCEPT THE GEO. CLUTHE MANUFACTURING CO. LIMITED CASE (SUPRA), AS PRECLUDING A REVIEW BY THE BOARD, WHERE AS IN THIS CASE, THERE HAS BEEN FULL ARGUMENT ON THE ISSUE, AS TO WHETHER A SPOILED BALLOT IS TO BE INCLUDED IN THE NUMBER OF BALLOTS "CAST".

10. THE BOARD HAS CAREFULLY REVIEWED THE ABLE ARGUMENTS SUBMITTED BY BOTH COUNSEL AS REGARDS THE MEANING TO BE ASCRIBED TO THE TERM "CAST", WHEN USED IN THE CONTEXT OF A BALLOT CAST. IN THIS REGARD, COUNSEL FOR THE RESPONDENT CITED THE NATIONAL STARCH AND CHEMICAL CO. (CANADA) LTD. CASE OLRB M.R. JUNE 1968, P. 285, AS AUTHORITY FOR THE PROPOSITION THAT JUDICIAL DECISIONS CONCERNING ELECTIONS UNDER CERTAIN ELECTION ACTS OF VARIOUS JURISDICTIONS ARE TOTALLY IRRELEVANT TO PROCEEDINGS UNDER THE LABOUR RELATIONS ACT. HOWEVER, IN OUR OPINION, THE BOARD'S STATEMENT DID NOT GO QUITE THIS FAR, BUT MERELY INDICATED THAT SUCH CASES WERE NOT "NECESSARILY HELPFUL" TO THE DETERMINATION OF THE MATTER BEFORE IT. HAVING REGARD TO THE LACK OF A DEFINITION OF THE TERM "CAST" IN THE ACT ITSELF, THE FACT THAT THIS ISSUE HAS NOW BEEN ARGUED AT LENGTH

BEFORE THIS BOARD FOR THE FIRST TIME AND TAKING INTO ACCOUNT THE PARTICULAR CIRCUMSTANCES OF THIS CASE, WE ARE THEREFORE PREPARED TO EXAMINE THE JUDICIAL DECISIONS IN THIS AREA.

11. HAVING CAREFULLY REVIEWED THE AUTHORITIES AS CITED BY COUNSEL IN ADDITION TO OTHER AUTHORITIES, IT BECOMES VERY CLEAR THAT A SPOILED BALLOT IS NOT TO BE CONSIDERED PART OF THE TOTAL NUMBER OF BALLOTS CAST. IN THIS REGARD, THE COURTS HAVE INTERPRETED A BALLOT CAST AS A VALID BALLOT THAT ACTUALLY REFLECTS A VOTE OR AN EXPRESSION OF CHOICE. CONSEQUENTLY, IT WOULD FOLLOW THAT A SPOILED BALLOT, WHICH FAILS TO EXPRESS A VOTE OR CHOICE CANNOT BE CONSIDERED A BALLOT CAST. (IN ARRIVING AT THIS CONCLUSION, WE HAVE CONSIDERED THE FOLLOWING AUTHORITIES: THE QUEEN V THE MAYOR, ALDERMEN, AND BURGESSES OF TEWKESBURY (1868), 3 Q.B. 629; IN RE THE CANADA TEMPERANCE ACT (1885), 9 O.R. 154; IN RE DILLON ET AL AND VILLAGE OF CARDINAL (1905), 10 O.L.R. 371; IN RE SWAN RIVER LOCAL OPTION BY-LAW (1906), 3 W.L.R. 546; IN RE WESTON LOCAL OPTION BY-LAW (1907), 9 O.W.R. 250; IN RE CLEARY AND THE TOWNSHIP OF NEPEAN (1907), 14 O.L.R. 392; IN RE BROWN AND TOWNSHIP OF FLAMBOROUGH (1911), 23 O.L.R. 533; IN RE CUMBERLAND ELECTION (1913), 15 D.L.R. 49; IN RE NORTH HURON ELECTION (1926) 1 D.L.R. 590; 14 HALS. (3RD 3D.) 139.

12. THIS CONCLUSION, MOREOVER, WOULD APPEAR TO CORRESPOND TO THE CHANGES IN THE ACT AS SET OUT IN PARAGRAPH #7 HEREIN. THUS, UNDER THE PREVIOUS LEGISLATION, WHERE THE ELIGIBLE EMPLOYEE FAILED TO PRESENT HIMSELF AT THE POLL DURING THE TIME OF THE TAKING OF THE VOTE, HE IN EFFECT "VOTED" AGAINST THE TRADE UNION. IT IS EVIDENT THAT THE SAME RESULT WOULD FOLLOW WHERE THE ELIGIBLE EMPLOYEE MARKED HIS BALLOT IN SUCH A MANNER THAT SUBSEQUENTLY RESULTED IN A RULING THAT THE BALLOT UTILIZED WAS SPOILED. IN OUR OPINION, THE PRESENT LEGISLATION NOW HAS THE EFFECT OF PREVENTING A "VOTE" TO BE COUNTED AGAINST THE TRADE UNION NOT ONLY WHERE THE ELIGIBLE EMPLOYEE HAS ABSENTED HIMSELF FROM THE POLL BUT ALSO IN THE SITUATION WHERE IN ATTEMPTING TO EXERCISE HIS FRANCHISE, HIS BALLOT HAS BEEN RULED SPOILED. IN THE LATTER CASE, THE SITUATION PRODUCES THE SAME RESULT AS IF THE ELIGIBLE EMPLOYEE HAD NOT PARTICIPATED IN THE VOTE AT ALL - THAT IS TO SAY, THAT THERE HAS BEEN NO EXPRESSION OF VOTE OR CHOICE AS CONTEMPLATED IN A CAST BALLOT. ACCORDINGLY, WE FIND THAT THE NUMBER OF BALLOTS CAST CANNOT INCLUDE SPOILED BALLOTS.

13. COUNSEL FOR THE RESPONDENT ALSO DREW TO THE BOARD'S ATTENTION, THE "PRACTICE" AS SET OUT IN ITS REPORTS SUMMARIZING THE RESULT OF VOTES CONDUCTED AFTER FEBRUARY 15, 1971, AS IN THE INSTANT CASE (SEE PARAGRAPH #5 HEREIN) TO THE EFFECT THAT SPOILED BALLOTS ARE INCLUDED IN THE COLUMN HEADED "NUMBER OF PERSONS WHO CAST BALLOTS." IN OUR OPINION, THE WORD "CAST" IN THIS CONTEXT, MERELY DENOTES THE NUMBER OF PERSONS PRESENTING THEMSELVES AT THE POLL FOR PURPOSES OF THE VOTE. ALTHOUGH THE USE OF SUCH A WORD MAY BE MISLEADING, WE DO NOT FIND THAT THERE EXISTS AN ESTABLISHED PRACTICE IN THIS REGARD AS SUGGESTED BY COUNSEL FOR THE RESPONDENT. PERHAPS IN THE FUTURE, THESE SUMMARIES AND INDEED THE FORM OF THE RETURNING OFFICER'S REPORT, (WHICH IS NOT SPECIFICALLY SET OUT



IN THE BOARD'S RULES OF PROCEDURE) SHOULD BE AMENDED. IN THIS REGARD, IT IS SUGGESTED THAT THE WORD "ISSUED" BE UTILIZED TO DENOTE THE BALLOTS HANDED TO THE EMPLOYEES FOR THE PURPOSE OF MARKING. UPON INDICATING THE NUMBER OF SUCH BALLOTS RULED SPOILED, THE NUMBER OF BALLOTS "CAST" WOULD BE SHOWN UPON DEDUCTING THE NUMBER OF SPOILED BALLOTS FROM THOSE ORIGINALLY ISSUED. ADOPTING SUCH A PROCEDURE WOULD THEN CERTAINLY BE IN ACCORD WITH THE CONCLUSIONS REACHED IN THIS DECISION. IN OUR OPINION THE FACT THAT THE BOARD MAY HAVE CARRIED OVER INTO THE NEW LEGISLATION A FORM EMBODYING THE TERM "BALLOT CAST", WHICH HAD BEEN UTILIZED UNDER PREVIOUS LEGISLATION AT A TIME WHEN THE MEANING OF THE SAID TERM WAS NOT IN ISSUE, DOES NOT CHANGE OUR ULTIMATE DECISION IN THIS REGARD.

14. ON THE TAKING OF THE REPRESENTATION VOTE DIRECTED BY THE BOARD MORE THAN FIFTY PER CENT OF THE BALLOTS CAST WERE CAST IN FAVOUR OF THE APPLICANT.

15. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

16. THE REGISTRAR WILL DESTROY THE BALLOTS CAST IN THE REPRESENTATION VOTE TAKEN IN THIS MATTER FOLLOWING THE EXPIRATION OF 30 DAYS FROM THE DATE OF THIS DECISION UNLESS A STATEMENT REQUESTING THAT THE BALLOTS SHOULD NOT BE DESTROYED IS RECEIVED BY THE BOARD FROM ONE OF THE PARTIES BEFORE THE EXPIRATION OF SUCH 30 DAY PERIOD.

DECISION OF BOARD MEMBER J.E.C. ROBINSON, Q.C.: JANUARY 29, 1973.

HAVING HAD AN OPPORTUNITY OF READING THE DECISION OF MY COLLEAGUES ON THIS PANEL, I HEREWITH EXPRESS MY DISSENT TO THEIR FINDING.

PURSUANT TO A DECISION OF THE BOARD, A REPRESENTATION VOTE WAS CONDUCTED IN THIS MATTER RESULTING IN THE REPORT OF THE RETURNING OFFICER DATED OCTOBER 30, 1972. THE MATTER WAS LISTED FOR CONTINUATION OF HEARING TO ALLOW THE PARTIES TO MAKE REPRESENTATIONS CONCERNING THE CONCLUSIONS TO BE DRAWN FROM THE RETURNING OFFICERS REPORT.

SUBSEQUENTLY, THE APPLICANT TRADE UNION QUESTIONED THE PROPRIETY OF THE DETERMINATION OF THE RETURNING OFFICER CONCERNING WHAT WAS INDICATED TO BE TWO "SPOILED BALLOTS" AS APPEARS IN HIS REPORT.

THE MAJORITY, IN ITS DECISION IN PARAGRAPH THREE, STATE AS FOLLOWS:-

"3. THE FIRST OBJECTION IN THIS REGARD CONCERNS A BALLOT, THE BACK PORTION OF WHICH BEARS A HAND-WRITTEN STATEMENT SIGNED BY MESSRS. FONTAINE AND VON VEH, THE RESPECTIVE AGENTS FOR THE APPLICANT AND RESPONDENT, AT THE COUNT. THIS STATEMENT PROVIDES AS FOLLOWS:

"APPLICANT AND RESPONDENT BOTH AGREE THAT THIS  
BALLOT IS A SPOILED BALLOT."

4. HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES, THE BOARD IS NOT PREPARED IN THESE CIRCUMSTANCES TO PERMIT THE APPLICANT TO UNILATERALLY REPUDIATE ITS AGREEMENT WITH RESPECT TO THE DISPOSITION OF THIS BALLOT. TO DO SO, IN OUR OPINION, WOULD HAVE THE EFFECT OF MAKING PROCEEDINGS BEFORE THIS BOARD INTERMINABLE AND INCONCLUSIVE, AND NOT CONDUCTIVE TO THE BEST INTERESTS OF LABOUR RELATIONS. (IN THIS REGARD, SEE THE UNIVERSITY OF WINDSOR CASE [1971] OLRB REP., P. 344; THE BELCOURT CONSTRUCTION (OTTAWA) CASE OLRB M.R. DECEMBER 1970, P. 944; CONTINENTAL CAN COMPANY OF CANADA LIMITED CASE [1971] OLRB REP., P. 269). ACCORDINGLY, IT WILL NOT BE NECESSARY IN THESE CIRCUMSTANCES, FOR THE BOARD TO MAKE A RULING CONCERNING THE PROPRIETY OF THE MARKINGS AS APPEARS ON THE FACT OF THIS BALLOT."

I AGREE WITH THE DISPOSITION MADE BY MY COLLEAGUES WITH RESPECT TO SUCH BALLOT. THE SECOND OF THE SPOILED BALLOTS IS REPRODUCED AS FOLLOWS:

**Mark "X" opposite your choice  
IN YOUR EMPLOYMENT RELATIONS WITH**

**ARROW TIMBER COMPANY LIMITED,**

**DO YOU WISH TO BE REPRESENTED BY**

LUMBER AND SAWMILL WORKERS'  
UNION, LOCAL 2995 OF THE  
UNITED BROTHERHOOD OF  
CARPENTERS AND JOINERS OF  
AMERICA

**YES**

**NO**

**NO**

THE RETURNING OFFICER RULED THAT SUCH DOCUMENT CONSTITUTED A SPOILED BALLOT AND SUCH RULING WAS CHALLENGED BEFORE THE BOARD BY THE RESPONDENT COMPANY. I AM IN AGREEMENT WITH THE MAJORITY THAT IT IS NOT NECESSARY TO DEAL WITH THE VALIDITY OF THE CHALLENGE REGARDING THIS BALLOT SINCE IN ANY EVENT, ANY DETERMINATION BY THE BOARD, HAVING REGARD TO THE CONCLUSIONS REACHED BY THE MAJORITY IN THIS DECISION, COULD NOT REDUCE THE APPLICANT'S MAJORITY POSITION AS THE MAJORITY DETERMINES IT UNDER SECTION 7(3) OF THE LABOUR RELATIONS ACT. IT IS MERELY REPRODUCED TO INDICATE THAT WHILE THE VOTER PURPORTED TO MAKE A CHOICE AND ANSWER THE QUESTION ASKED OF HIM ON THE BALLOT, THE RETURNING OFFICER OF THE BOARD RULED THAT SUCH BALLOT WAS A "SPOILED BALLOT."

THE PERTINENT PORTION OF THE REPORT OF THE RETURNING OFFICER STATES THE RESULT OF THE VOTE AS FOLLOWS:-

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	39
NUMBER OF PERSONS <u>WHO CAST BALLOTS</u>	38
NUMBER OF SPOILED BALLOTS	2
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	19
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	17

(EMPHASIS ADDED)

COUNSEL FOR THE RESPONDENT SUBMITTED THAT OF THE 38 BALLOTS CAST IN THE REPRESENTATION VOTE, THE APPLICANT TRADE UNION RECEIVED ONLY 19 VOTES MARKED IN ITS FAVOUR. HIS SUBMISSION THEREFORE WAS THAT IT DID NOT OBTAIN "MORE THAN 50 PER CENT OF THE BALLOTS CAST" AND REQUIRED BY SECTION 7(3) OF THE LABOUR RELATIONS ACT, AND THE APPLICATION SHOULD BE DISMISSED.

THE APPLICANT SUBMITTED THAT THE TWO SPOILED BALLOTS WERE VOID AND CONSEQUENTLY SHOULD NOT BE COUNTED AS BALLOTS "CAST". IT WOULD ACCORDINGLY FOLLOW THAT IF THE BOARD AGREED WITH SUCH ARGUMENT, THE TRADE UNION WOULD HAVE OBTAINED 19 OF 36 BALLOTS "CAST", AND THE TRADE UNION WOULD BE ENTITLED TO CERTIFICATION PURSUANT TO THE PROVISIONS OF SECTION 7(3) OF THE LABOUR RELATIONS ACT.

WHILE IT WAS GENERALLY CONCEDED BY BOTH PARTIES THAT A "BALLOT" NEED NOT INDICATE A CHOICE, IT WAS STRONGLY ARGUED BY COUNSEL FOR THE APPLICANT THAT A BALLOT "CAST" MUST INDICATE A CHOICE BETWEEN PERSONS, AS IN FEDERAL, PROVINCIAL, OR MUNICIPAL ELECTIONS, OR IN ANSWER TO A QUESTION, AS IN CERTAIN REFERENDUMS.

ON THE OTHER HAND, THE RESPONDENT TOOK THE POSITION THAT THE BOARD, IN THE ABSENCE OF SOME COMPELLING LANGUAGE IN THE STATUTE, SHOULD ADOPT THE COMMON DICTIONARY MEANING OF THE WORD "CAST" VIZ., TO DEPOSIT.



BY VIRTUE OF SECTION 95(1) OF THE LABOUR RELATIONS ACT, THE BOARD IS GIVEN THE EXCLUSIVE JURISDICTION TO EXERCISE THE POWERS CONFERRED UPON IT BY OR UNDER THE ACT AND TO DETERMINE ALL QUESTIONS OF FACT OR LAW THAT ARISE IN ANY MATTER BEFORE IT, AND IT IS IN THE CONTEXT THEREFORE OF LABOUR RELATIONS THAT THIS BOARD IS CHARGED WITH THE DETERMINATION OF THIS PROBLEM. IN MY RESPECTFUL OPINION, THE BOARD HAS MANY TIMES DETERMINED THE QUESTION OF WHAT IS THE MEANING OF "BALLOTS CAST", AS PRESENTLY CONTAINED IN SECTION 7(3) OF THE ACT.

PRIOR TO FEBRUARY 15TH, 1971, THE RELEVANT LEGISLATION PROVIDED AS FOLLOWS:

"IF ON THE TAKING OF A REPRESENTATION VOTE MORE THAN 50 PER CENT OF THE BALLOTS OF ALL THOSE ELIGIBLE TO VOTE ARE CAST IN FAVOUR OF THE TRADE UNION, AND IN OTHER CASES, IF THE BOARD IS SATISFIED THAT MORE THAN 55 PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT ARE MEMBERS OF THE TRADE UNION, THE BOARD SHALL CERTIFY THE TRADE UNION AS THE BARGAINING AGENT OF THE EMPLOYEES IN THE BARGAINING UNIT."

(EMPHASIS ADDED)

WHAT THEN HAS BEEN THE HISTORY OF THE BOARD'S JURISPRUDENCE CONCERNING THIS QUESTION AND THE LIGHT IN WHICH THE BOARD CONSIDERS SUCH QUESTION UNDER THE PREVIOUS LEGISLATION?

IN THE NATIONAL STARCH AND CHEMICAL CO. (CANADA) LTD. CASE, OLRB M.R. JUNE, 1968, P. 285, THE BOARD IN CONSIDERING THE QUESTION OF "SPOILED BALLOTS" WHICH WERE IN SIMILAR FORM TO THAT BALLOT REPRODUCED HEREINBEFORE, STATED:

"WHILE THERE ARE A MULTITUDE OF CASES CONCERNING ELECTIONS UNDER THE ELECTION ACT, IT SHOULD BE POINTED OUT THAT THIS BOARD IS NOT BOUND BY THE PROVISIONS OF THAT ACT AND SUCH CASES ARE NOT NECESSARILY HELPFUL TO THE DETERMINATION OF THIS MATTER."

IT IS ABUNDANTLY CLEAR FROM THAT DECISION THAT THE BALLOTS CONSIDERED IN THAT CASE WOULD HAVE BEEN SPOILED BALLOTS UNDER THE PROVISIONS OF THE ELECTIONS ACT. HOWEVER, THE BOARD FOUND THAT THEY WERE NOT SPOILED BALLOTS FOR THE PURPOSE OF THE LABOUR RELATIONS ACT AND ACCORDINGLY THEY MUST BE CONSIDERED TO BE "BALLOTS CAST" IN ACCORDANCE WITH THE PROVISIONS OF THE HEREINBEFORE RECITED SECTION.

IN THE INSTANT CASE, COUNSEL FOR THE APPLICANT TRADE UNION HAS RELIED UPON VARIOUS JUDICIAL DECISIONS CONCERNING ELECTIONS UNDER CERTAIN ELECTION ACTS OF VARIOUS JURISDICTIONS. MANY DECISION WOULD SEEM TO SUPPORT HIS POSITION ALTHOUGH NONE DEAL WITH THE QUESTION OF LABOUR RELATIONS.

INDEED IT WAS QUITE PROPERLY POINTED OUT TO THE BOARD IN LITHE AND GLASGOW CORPORATION 1921 S.C. 694, WHEREIN IN A VOTE UNDER THE PROVISIONS OF THE SCOTTISH TEMPERANCE ACT, IT WAS HELD THAT VOTES RECORDED MEANT ALL BALLOTS PUT INTO THE BALLOT BOX INCLUDING SPOILED BALLOT PAPERS.

HOWEVER THAT MAY BE, IT WOULD SEEM THAT THE BOARD HAS FORMULATED ITS OWN PRACTICE WITH RESPECT TO THE MEANING OF "BALLOTS CAST" IRRESPECTIVE OF THE DECISIONS CONCERNING ELECTIONS UNDER CERTAIN ELECTION ACTS OF VARIOUS JURISDICTIONS, AND THAT PRACTICE IS REFLECTED IN THE NATIONAL STARCH AND CHEMICAL CO. (CANADA) LTD. CASE, SUPRA.

NOR HAS THAT DETERMINATION BEEN CONFINED TO THE ABOVE MENTIONED CASE. FOR A CONSIDERABLE NUMBER OF YEARS, THE BOARD HAS PUBLISHED MONTHLY REPORTS WHICH ARE USED EXTENSIVELY BY COUNSEL APPEARING BEFORE THE BOARD AND BY PRACTITIONERS AND LABOUR RELATIONS CONSULTANTS IN ADVISING THEIR CLIENTS. IN EACH COPY OF THE BOARD MONTHLY REPORTS ARE PRINTED THE RESULTS OF VARIOUS REPRESENTATION VOTES. THEY ARE ALWAYS PRINTED AS FOLLOWS:

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST

NUMBER OF PERSONS WHO CAST BALLOTS

NUMBER OF SPOILED BALLOTS

NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT

NUMBER OF BALLOTS MARKED AGAINST APPLICANT

(EMPHASIS ADDED)

WITHOUT ANY EXCEPTION THAT I AM AWARE OF, THE LAST 3 FIGURES ALWAYS TOTAL THE NUMBER OF PERSONS WHO CAST BALLOTS, VIZ., IN EACH CASE "SPOILED BALLOTS" HAVE BEEN INCLUDED IN THE FIGURE OF THE "NUMBER OF PERSONS WHO CAST BALLOTS".

EFFECTIVE FEBRUARY 15, 1971, BY VIRTUE OF SECTION 5, THE LABOUR RELATIONS AMENDMENT ACT, 1970, (No. 2) S.O. 1970, c. 85, SECTION 7(3) OF THE ACT PROVIDES AS FOLLOWS:

"IF ON THE TAKING OF A REPRESENTATION VOTE MORE THAN 50 PER CENT OF THE BALLOTS CAST ARE CAST IN FAVOUR OF THE TRADE UNION, AND IN OTHER CASES, IF THE BOARD IS SATISFIED THAT MORE THAN 65 PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT ARE MEMBERS OF THE TRADE UNION, THE BOARD SHALL CERTIFY THE TRADE UNION AS THE BARGAINING AGENT OF THE EMPLOYEES IN THE BARGAINING UNIT."

(EMPHASIS ADDED)

WHAT HAS BEEN THE HISTORY OF THE BOARD'S JURISPRUDENCE CONCERNING THE QUESTION OF "BALLOTS CAST" SINCE FEBRUARY 15, 1971?

IN [1971] OLRB M.R., MARCH, P. 51, THE BOARD RECORDS, IN DEALING WITH THE RESULT OF A REPRESENTATION VOTE IN FILE NO. 31-70-R: UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL CIO CLC V THE GEO. CLUTHE MANUFACTURING CO. LIMITED

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	114
NUMBER OF PERSONS WHO CAST BALLOTS	109
NUMBER OF SPOILED BALLOTS	5
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	54
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	50

THE BOARD STATED, IN A UNANIMOUS DECISION AS FOLLOWS:

"ON THE TAKING OF THE PRE-HEARING REPRESENTATION VOTE DIRECTED BY THE BOARD NOT MORE THAN FIFTY PER CENT OF THE BALLOTS WERE CAST IN FAVOUR OF THE APPLICANT. (EMPHASIS ADDED)

THE APPLICATION IS THEREFORE DISMISSED."

IT IS READILY DISCERNABLE FROM AN EXAMINATION OF THE FIGURES THAT IF "SPOILED BALLOTS" WERE NOT FOUND TO BE INCLUDED AS "BALLOTS CAST", THE APPLICANT TRADE UNION WOULD HAVE BEEN IN A CERTIFIABLE POSITION.

WITH RESPECT, I FIND IT SOMEWHAT PRESUMPTUOUS ON THE PART OF MY COLLEAGUES WHEN THEY SUGGEST THAT THE ISSUE WAS NOT RAISED IN THE GEO. CLUTHE MANUFACTURING CO. LIMITED CASE. THE ISSUE IS A SIMPLE, CONFINED ISSUE AND THE EARLIER PANEL MUST, OF NECESSITY, HAVE DIRECTED THEIR MINDS TO THE QUESTION OF WHETHER "SPOILED BALLOTS" WERE TO BE INCLUDED IN "BALLOTS CAST" TO ARRIVE AT ANY DECISION.

MY COLLEAGUES IN THEIR DECISION HAVE STATED THAT "IT HAS BEEN THE CONSISTENT PRACTICE OF THIS BOARD; THAT ONE DIVISION OF THE BOARD WILL NOT SIT ON APPEAL ON A DECISION FROM ANOTHER DIVISION OF THE BOARD DIFFERENTLY CONSTITUTED". WITH GREAT RESPECT TO MY COLLEAGUES, THIS IS EXACTLY WHAT THEY ARE PURPORTING TO DO. THERE IS ABSOLUTELY NO DISTINCTION WHATSOEVER IN THE FACTS; THE CASE IS ON "ALL FOURS". THE MAJORITY IN THE INSTANT CASE HAVE MERELY COME TO A DIAMETRICALLY OPPOSED FINDING TO THE EARLIER FINDING OF THE BOARD. TO SUGGEST THAT THERE WAS NO REQUEST FOR RECONSIDERATION OF THE EARLIER CASE MERELY REINFORCES ITS ACCURACY, FOR THE UNION PERSON INVOLVED IN THAT MATTER WAS WELL VERSED IN THE UNION MOVEMENT AND PROCEEDINGS BEFORE THIS BOARD.



IN ADDITION, THE BOARD MONTHLY REPORTS, IN THE REPORTING OF REPRESENTATION VOTES, HAVE CONTINUED SINCE FEBRUARY 15, 1971, TO INDICATE, WITHOUT EXCEPTION THAT "SPOILED BALLOTS" ARE TO BE INCLUDED AMONG "BALLOTS CAST".

WHILE THE BOARD MAY NOT BE BOUND BY THE PRINCIPLE OF STARE DECISIS, PRACTITIONERS BEFORE IT HAVE RELIED UPON THE CONCEPT THAT THE BOARD WILL NOT REACH ITS DECISIONS ON A PURELY AD HOC BASIS.

WITHOUT SUCH ASSURANCE, THE TIME AND EXPENSE INVOLVED IN REPRODUCING THE DECISIONS OF THE BOARD IN THE FORM OF REPORTS IS USELESS, AND CONTRARY TO WHAT MOST PEOPLE FELT, WAS THE VALUE OF SUCH REPORTS. INDEED, THE BOARD RECENTLY IN DEALING WITH SUCH A VARIABLE AS THE APPROPRIATENESS OF A BARGAINING UNIT STATED:-

"WHILE WE REQUIRE THAT A FACT DETERMINATION BE MADE IN EACH CASE WE ARE ALSO OF THE VIEW THAT PREVIOUS DECISIONS OF THIS BOARD IN SIMILAR SITUATIONS ARE TO BE GIVEN WEIGHT. A FINDING WITH RESPECT TO THE APPROPRIATENESS OF A BARGAINING UNIT IS SIGNIFICANT BECAUSE IT AFFECTS NOT ONLY THE ORGANIZING PRACTICES OF TRADE UNIONS BUT THE MANNER IN WHICH EMPLOYERS ORGANIZE THEIR AFFAIRS, AND ONCE THE BOARD HAS ARRIVED AT A DETERMINATION AS TO WHAT IS AN APPROPRIATE BARGAINING UNIT, IT SHOULD NOT HASTILY DEPART FROM ITS EARLIER DECISIONS. WHILE WE RECOGNIZE THAT WE ARE NOT BOUND BY THE PRINCIPLE OF STARE DECISIS, WE ARE ALSO OF THE OPINION THAT INCONSISTENT DECISIONS IN SIMILAR FACT SITUATIONS WILL CREATE CONFUSION."

SEE; CANADIAN UNION OF PUBLIC EMPLOYEES AND THE UNIVERSITY OF WESTERN ONTARIO, (AS YET UN-REPORTED) BOARD FILE NO. 1599-71-R.

IF, AS IS SUGGESTED, "INCONSISTENT DECISIONS IN SIMILAR FACT SITUATIONS WILL CREATE "CONFUSION", IT IS MY OPINION THAT INCONSISTENT DECISIONS ON THE SAME FACT SITUATIONS, WILL CREATE CHAOS.

THUS, IN MY OPINION, THE BOARD HAS DETERMINED THAT IN THE INDUSTRIAL RELATIONS CONTEXT AND HAVING REGARD TO THE SPECIFIC WORDING OF SECTION 7(3) OF THE ACT, "BALLOTS CAST" INCLUDE "SPOILED BALLOTS."

I WOULD SO FIND AND ACCORDINGLY DISMISS THE APPLICATION.

2822-72-R: RETAIL CLERKS UNION, LOCAL 206, CHARTERED BY THE RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICATION) V. LOBLAW GROCETERIAS CO. LIMITED (RESPONDENT) V. UNION OF CANADIAN RETAIL EMPLOYEES, C.L.C. (INTERVENER).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS D. B. ARCHER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: J. A. RYDER, HAROLD JURCHUK AND TED KEHOE FOR THE APPLICANT; W. GIBSON GRAY, Q.C., F. D. KEAN AND W. COULES FOR THE RESPONDENT; MARTIN LEVINSON AND D. GILBERT FOR THE INTERVENER.

DECISION OF THE BOARD: JANUARY 30, 1973.

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2. ALL PARTIES AGREED AND THE BOARD FINDS THAT ON OR ABOUT OCTOBER 4, 1972, A SALE WITHIN THE MEANING OF SECTION 55 OF THE ACT WAS MADE BY SUPER CITY DISCOUNT FOODS LIMITED (HEREINAFTER CALLED "SUPER CITY") TO THE RESPONDENT OF A BUSINESS OPERATING IN A STORE AT 3220 DOUGALL ROAD, WINDSOR.

3. THERE HAS BEEN NO CHANGE IN THE CHARACTER OF THE BUSINESS SINCE THE SALE, NOR HAS THERE BEEN ANY INTERMINGLING OF EMPLOYEES WHO WORKED IN THE ABOVE PREMISES PRIOR TO THE SALE AND WHO CONTINUE TO WORK THERE WITH OTHER EMPLOYEES OF THE RESPONDENT.

4. AT THE TIME OF THE SALE, THE APPLICANT REQUESTED ALL EMPLOYEES OF SUPER CITY IN ANY OF ITS STORES IN ONTARIO (WITH CERTAIN GEOGRAPHIC EXCLUSIONS NOT HERE RELEVANT), SAVE AND EXCEPT STORE MANAGER AND PERSONS ABOVE THE RANK OF STORE MANAGER.

5. THE INTERVENER IS PARTY TO A COLLECTIVE AGREEMENT WITH THE RESPONDENT, COVERING ALL EMPLOYEES (WITH CERTAIN EXCEPTIONS NOT HERE RELEVANT) IN ANY OF THE RESPONDENT'S STORES IN ONTARIO WITH SPECIFIED GEOGRAPHIC EXCLUSIONS, AMONG WHICH IS THE STORE LOCATED AT 3220 DOUGALL ROAD, WINDSOR.

6. IT IS CONCEDED BY THE RESPONDENT AND THE INTERVENER THAT THE APPLICANT IS ENTITLED TO A DECLARATION THAT IT IS THE BARGAINING AGENT FOR ALL EMPLOYEES OF THE RESPONDENT, EXCEPT STORE MANAGERS AND PERSONS ABOVE THAT RANK EMPLOYED AT 3220 DOUGALL ROAD, WINDSOR. THE APPLICANT, HOWEVER, SEEKS A DECLARATION ESTABLISHING IT AS THE BARGAINING AGENT FOR EMPLOYEES OF THE RESPONDENT IN THE CITY OF WINDSOR RATHER THAN SIMPLY THOSE AT THE DOUGALL ROAD LOCATION. THE APPLICANT SUBMITTED THAT THE BARGAINING UNIT WOULD THUS CONFORM TO THOSE USUALLY FOUND BY THE BOARD TO BE APPROPRIATE FOR THIS PARTICULAR INDUSTRY OR BUSINESS. THE INTERVENER OPPOSED THE APPLICANT'S REQUEST FOR THE WIDER GEOGRAPHIC COVERAGE.

7. IN DEALING WITH AN APPLICATION FOR RELIEF UNDER SECTION 47(A) (NOW SECTION 55) OF THE ACT, THE BOARD, IN THE OSHAWA WHOLESALE LIMITED CASE, OLRB M.R. 1965, P. 584, STATED:

"WE WOULD POINT OUT THAT DIFFERENT CONSIDERATIONS ARE TAKEN INTO ACCOUNT BY THE BOARD IN DETERMIN-

ING BARGAINING UNITS IN APPLICATIONS MADE UNDER SECTION 47A OF THE LABOUR RELATIONS ACT AND IN APPLICATIONS FOR CERTIFICATION. FOR EXAMPLE, IN AN APPLICATION FOR CERTIFICATION FOR THE EMPLOYEES OF RETAIL FOOD STORES, IT IS THE PRACTICE OF THE BOARD TO INCLUDE THE EMPLOYEES IN ALL OF THE STORES OF THE PARTICULAR OWNER IN A MUNICIPALITY IN THE BARGAINING UNIT. IN THE INSTANT CASE, IF THE RETAIL CLERKS INTERNATIONAL ASSOCIATION, LOCAL 206 HAD NOT ALREADY ACQUIRED BARGAINING RIGHTS FOR SOME OF THE EMPLOYEES OF OSHAWA WHOLESALE, THE BOARD WOULD HAVE NO DIFFICULTY IN FINDING THAT THE APPROPRIATE BARGAINING UNIT WOULD INCLUDE ALL OF THE STORES OF OSHAWA WHOLESALE IN METROPOLITAN TORONTO. THE PRACTICES OF THE BOARD IN CERTIFICATION APPLICATIONS WITH RESPECT TO THE APPROPRIATENESS OF BARGAINING UNITS, HOWEVER, MAY BE CIRCUMSCRIBED IN AN APPLICATION UNDER SECTION 47A, SINCE THE SECTION PROVIDES, EXCEPT IN SPECIAL CIRCUMSTANCES, THAT A TRADE UNION CONTINUES TO HOLD ITS BARGAINING RIGHTS IN THE LIKE BARGAINING UNIT. IN OTHER WORDS, IN APPLYING SECTION 47A, THE BOARD MUST CONSIDER NOT ONLY WHAT WOULD BE AN APPROPRIATE BARGAINING UNIT IN A CERTIFICATION PROCEEDING, BUT ALSO IT MUST TAKE INTO ACCOUNT, AND IN LARGE MEASURE BE GOVERNED BY, THE SCOPE OF THE BARGAINING UNIT ALREADY IN EXISTENCE."

8. IT IS THE PRIMARY PURPOSE OF SECTION 55 TO PRESERVE ALREADY EXISTING BARGAINING RIGHTS IN THE EVENT OF THE SALE OF A BUSINESS AND NOT TO GIVE TO A TRADE UNION BARGAINING RIGHTS WHICH IT HAD NOT PREVIOUSLY HAD. IN THE PRESENT INSTANCE, THE ONLY BARGAINING RIGHTS OF THE APPLICANT WHICH MIGHT BE IN JEOPARDY, WERE IT NOT FOR THE SAVING PROVISIONS OF SECTION 55 OF THE ACT, ARE THOSE RELATED TO THE EMPLOYEES IN THE BUSINESS AT 3220 DOUGALL ROAD, WINDSOR. IN THE OPINION OF THE BOARD, THE PRESERVATION OF THOSE RIGHTS ARE NOT, IN ANY WAY, DEPENDENT UPON AN EXTENSION OF THEIR GEOGRAPHIC LIMITS SO AS TO EMBRACE THE ENTIRE CITY OF WINDSOR.

9. THE BOARD ACCORDINGLY DECLARES THAT THE APPLICANT IS THE BARGAINING AGENT FOR THOSE PERSONS IN THE LIKE BARGAINING UNIT WHICH THE BOARD FINDS TO BE ALL EMPLOYEES OF THE RESPONDENT AT ITS STORES AT 3220 DOUGALL ROAD, WINDSOR, SAVE AND EXCEPT MANAGER AND PERSONS ABOVE THE RANK OF MANAGER.

2223-72-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. THE FRONTENAC COUNTY BOARD OF EDUCATION (RESPONDENT).



BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

DECISION OF THE BOARD:

JANUARY 25, 1973.

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2. THE BOARD HAS CONSIDERED THE REPORT OF THE EXAMINER IN THIS MATTER DATED OCTOBER 12, 1972.

3. IN THE COURSE OF HIS EXAMINATION, THE EXAMINER EXAMINED DYENS ANDERSON, DON BURTCH, FRED PAYNE, GEORGE DERBYSHIRE, SYDNEY RICHARDSON AND GEORGE ORR CLASSIFIED BY THE RESPONDENT AS HEAD CARETAKERS OF SECONDARY SCHOOLS. ALEC MEURLING, THE MANAGER OF PHYSICAL PLANT, ALSO GAVE EVIDENCE BEFORE THE EXAMINER.

4. THE EVIDENCE OF DYENS ANDERSON INDICATES THAT HE HAS NEVER BEEN INVOLVED IN THE HIRING AND FIRING OF EMPLOYEES OF THE RESPONDENT. ON ONE OCCASION HE RECOMMENDED THE HIRING OF A PERSON BUT THIS MAN WAS NOT HIRED. HE DOES NOT KNOW WHO IS RESPONSIBLE FOR HIRING THE RESPONDENT'S EMPLOYEES. WHEN AN EMPLOYEE COMES TO WORK IN HIS SCHOOL, HE SHOWS HIM AROUND THE SCHOOL AND HOW TO CLEAN THE AREAS FOR WHICH HE WILL BE RESPONSIBLE. HE IS REQUIRED TO CHECK THE WORK OF THE OTHER EMPLOYEES TO MAKE SURE THAT IT IS DONE PROPERLY. HIS IMMEDIATE SUPERVISOR, THE SUPERVISOR OF OPERATIONS, HAS INQUIRED FROM MR. ANDERSON HOW A NEW MAN WAS DOING AND HE HAS TOLD THE SUPERVISOR OF OPERATIONS. HOWEVER, HE HAS NEVER MADE A WRITTEN EVALUATION REPORT ON AN EMPLOYEE.

5. WHEN IT IS NECESSARY TO WORK OVER TIME, HE CALLS THE SUPERVISOR OF OPERATIONS TO GET PERMISSION TO WORK OVERTIME. ONCE PERMISSION IS GRANTED, MR. ANDERSON DECIDES WHICH MEN WORK OVERTIME. MR. ANDERSON AND THE CARETAKERS WHO WORK WITH HIM ARRANGE THE VACATION SCHEDULE BETWEEN THEMSELVES. HOWEVER, THE SUPERVISOR OF OPERATIONS DECIDES WHETHER OR NOT THE VACATION SCHEDULE IS ACCEPTABLE. WHEN A CARETAKER IS SICK ON THE JOB, MR. ANDERSON ALLOWS HIM TO GO HOME AND RECORDS THIS FACT AGAINST THE CARETAKER'S SICK LEAVE CREDIT. MR. ANDERSON SUBMITS A MONTHLY REPORT ON SICK LEAVE AND ABSENTEEISM AND NOTES THE DATE AND REASON FOR THE ABSENTEEISM. MR. ANDERSON IS PAID FOR HIS OVER TIME WORK. ON OCCASIONS HE GIVES INSTRUCTIONS TO CARETAKERS WHENEVER THERE IS SOMETHING EXTRA TO DO IN ONE OF THE ROOMS. HE HAS ALSO TOLD THE CARETAKERS TO CLEAN THE CLASS ROOMS BETTER AND ALSO TO DO A ROOM OVER BUT HE HAS NEVER HAD TO CORRECT CARETAKERS FOR LATENESS, LENGTHY COFFEE BREAKS OR LEAVING EARLY.

6. MR. ANDERSON'S DUTIES INCLUDE LOOKING AFTER THE COMPRESSORS WHICH TAKES ABOUT HALF AN HOUR, CHECKING ON THE CLEANLINESS OF THE SCHOOL WHICH TAKES ABOUT AN HOUR. IN ADDITION, HE HAS THE FRONT PART OF THE HALL TO CLEAN HIMSELF WHICH TAKES ABOUT THIRTY-FIVE MINUTES. ON OCCASIONS HE MAY REPAIR LOCKERS, GIVE A HAND IN TAKING IN SUPPLIES, PUT UP A MOVIE SCREEN, CUT GRASS, SHOVEL SNOW, WASH WINDOWS AND DO SOME PAINTING. THE AMOUNT OF PHYSICAL WORK HE DOES, TAKES ABOUT FOUR HOURS

DAILY AND THE BALANCE OF HIS TIME IS SPENT COMPLETING RECORDS, INSPECTING FOR CLEANLINESS AND REQUESTING MATERIALS. MR. ANDERSON DECIDES WHICH CLEANING MATERIALS HE REQUIRES AND FILLS OUT A REQUISITION WHICH IS SUBMITTED TO THE SUPERVISOR OF OPERATIONS FOR APPROVAL. SOMETIMES, THE ITEMS HE HAS ORDERED HAVE BEEN DISALLOWED. HE HAS NO IDEA OF THE VALUE OF THE ITEMS THAT HE ORDERS. HE HAS NEVER RECOMMENDED PROMOTION, DEMOTION OR A PAY INCREASE. THE SUPERVISOR OF OPERATIONS VISITS THE SCHOOL EACH MONTH AND HE TELEPHONES THE SUPERVISOR OF OPERATIONS ABOUT ONCE A WEEK FOR ASSISTANCE.

7. WHEN A NEW CARETAKER ARRIVED, THE SUPERVISOR OF OPERATIONS TOLD THE NEW MAN THE HOURS HE WOULD BE WORKING. MR. ANDERSON DOES NOT SWITCH CARETAKERS FROM SHIFT TO SHIFT WITHOUT ASKING AND HE MAY NOT CHANGE THE TIME OF STARTING. FROM TIME TO TIME, MR. ANDERSON RECEIVES INSTRUCTIONS FROM THE PRINCIPAL OF THE SCHOOL. IN THE EVENT THAT OVERTIME IS NECESSARY, HE CONTACTS THE SUPERVISOR OF OPERATIONS FOR PERMISSION AND IS NOT ABLE TO AUTHORIZE OVERTIME WITHOUT CONTACTING SOMEONE FROM THE SCHOOL BOARD.

8. HE IS UNABLE EITHER TO GRANT TIME OFF WITH PAY OR TO SEND A MAN HOME IF HE IS NOT DOING HIS JOB PROPERLY. WHENEVER IT IS NECESSARY TO TRANSFER A CARETAKER WHO WORKS AT HIS SCHOOL, HE IS NOT CONSULTED ABOUT THIS MOVE AND IS UNABLE TO PREVENT THIS MAN FROM BEING TRANSFERRED. WHEN CARETAKERS REPORT HALF AN HOUR LATE FOR WORK, HE ADVISES THEM THAT THEY WILL HAVE TO MAKE UP THE TIME AND KEEPS RECORDS OF THIS INFORMATION.

9. THE EVIDENCE OF DON BURTCH INDICATES THAT HE HAS NEVER BEEN INVOLVED IN HIRING OR IN A RECOMMENDATION THAT ANYONE BE HIRED. WHEN JOB APPLICANTS HAVE TELEPHONED HIM, HE HAS INSTRUCTED THEM TO CALL THE SUPERVISOR OF OPERATIONS OR THE PERSONNEL OFFICER. HE HAS NEVER BEEN INVOLVED IN DISMISSING AN EMPLOYEE AND HAS NEVER DISCIPLINED AN EMPLOYEE. WHILE HE HAS ASKED THAT TWO CARETAKERS BE TRANSFERRED, THEY HAVE NOT BEEN TRANSFERRED. HE HAS ASKED THAT SOMEONE BE DISMISSED AND HAS NOT HEARD WHETHER THAT PERSON HAS BEEN DISMISSED.

10. MR. BURTCH SPENDS BETWEEN ONE AND TWO HOURS A DAY INSPECTING THE WORK DONE BY THE CARETAKERS. HE HAS NEVER TOLD ANYONE TO STAY LATE TO MAKE UP FOR LATE ARRIVAL. THE SUPERVISOR OF OPERATIONS HAS MADE UP A CLEANING PLAN FOR MR. BURTCH'S SCHOOL SHOWING THE DIFFERENT CLEANING AREAS, AND, WHEN NEW EMPLOYEES COME THEY TAKE OVER THE AREA CLEANED BY THE CARETAKERS WHO LEFT. HE DOES NOT PREPARE A WRITTEN EVALUATION OF CARETAKERS BUT THE SUPERVISOR OF OPERATIONS AND THE PERSONNEL OFFICER ASK THE WITNESS HOW CARETAKERS ARE DOING. HE PREPARES A REQUISITION FOR CARETAKERS' SUPPLIES AND SENDS IT TO THE SUPERVISOR OF OPERATIONS FOR HIS APPROVAL. HE HAD TELEPHONED THE SUPERVISOR OF OPERATIONS TO OBTAIN APPROVAL FOR OVERTIME WORK. HE THEN ASKS HIS CARETAKERS WHO WANTS TO WORK OVERTIME. MR. BURTCH HAS WORKED OVERTIME AND, WHEN HE CLAIMS IT, HE IS PAID FOR THE OVERTIME.

11. WHEN AN EMPLOYEE HAS A PROBLEM ON THE JOB, HE CONSULTS EITHER

MR. BURTCH OR THE SUPERVISOR OF OPERATIONS. IF A CARETAKER REQUIRES TIME OFF, MR. BURTCH TELLS HIM TO TAKE IT OFF AND MAKE UP THE TIME LATER. HE RECORDS ABSENTEEISM ON A SLIP OF PAPER WHICH HE SIGNS AND SENDS TO THE SUPERVISOR OF OPERATIONS. THE PHYSICAL WORK DONE BY MR. BURTCH INCLUDES HELPING WITH HALLS, CAFETERIA, LOOKING AFTER THE FAN MOTORS IN THE BOILER ROOM, MAKING SURE THAT THE FILTERS ARE FUNCTIONING, TRYING TO LOOK AFTER THE KITCHEN AND ANYTHING TO DO WITH THE HEATING SYSTEM. HE SPENDS FIVE HOURS A DAY DOING PHYSICAL WORK AND GENERAL CARETAKING DUTIES. HE SPENDS THE BALANCE OF HIS DAY IN INSPECTING THE CARETAKERS WORK, KEEPING RECORDS, KEEPING TRACK OF SUPPLIES, CONSULTING WITH THE PRINCIPAL AND LOOKING AFTER THE SECURITY OF THE AUTOMOBILES. HE HAS NO ACCESS TO PERSONNEL FILES.

12. THE SUPERVISOR OF OPERATIONS COMES TO HIS SCHOOL APPROXIMATELY ONCE A MONTH AND HE TELEPHONES THE SUPERVISOR OF OPERATIONS ABOUT ONCE A WEEK. HE FIRST RECOMMENDED THE DISCHARGE OF A CARETAKER ABOUT A YEAR AGO AND HE ALSO RECOMMENDED A TRANSFER OF ANOTHER CARETAKER ABOUT A YEAR AGO. THESE RECOMMENDATIONS HAVE NOT YET BEEN CARRIED OUT. MR. BURTCH CANNOT DECIDE WHICH SHIFT A MAN WILL WORK. THIS DECISION IS MADE BY THE SUPERVISOR OF OPERATIONS. HE HAS NO AUTHORITY TO CHANGE VACATION SCHEDULES AND DOES NOT HAVE ANY AUTHORITY TO GRANT TIME OFF UNLESS THE CARETAKER MAKES UP THE TIME LATER. HE SUPERVISES THE WORK THAT IS DONE WHILE HE IS AT WORK. HE RECEIVES HIS INSTRUCTIONS FROM THE SUPERVISOR OF OPERATIONS AND PASSES THIS INFORMATION ON TO THE OTHER CARETAKERS. THE PRINCIPAL OF THE SCHOOL SIGNS FOR OVERTIME WORK IN CONNECTION WITH NON-SCHOOL FUNCTIONS AND MR. BURTCH SENDS THE INFORMATION TO THE SUPERVISOR OF OPERATIONS BEFORE THE CARETAKER WHO WORKED OVERTIME WILL BE PAID FOR IT.

13. MR. BURTCH IS RESPONSIBLE FOR MAKING SURE THAT ALL CARETAKING EQUIPMENT IS MAINTAINED AND USED IN A PROPER MANNER. HE IS RESPONSIBLE FOR MAKING SURE THAT THE CARETAKING EQUIPMENT IS KEPT CLEAN. WHEN A MAN WANTS TIME OFF, MR. BURTCH REFERS HIM TO THE BOARD'S OFFICE.

14. THE EVIDENCE OF FRED PAYNE INDICATES THAT HE PRESUMED HE WAS IN CHARGE OF THE CARETAKERS. HE HAS NEVER BEEN INVOLVED IN HIRING AND THE FIRST CONTACT HE HAS WITH HIS NEW EMPLOYEES IS WHEN SOMEONE FROM THE BOARD'S OFFICE SENDS OVER A NEW EMPLOYEE. HE INSTRUCTS THE NEW EMPLOYEE ON HIS JOB AND TELLS HIM WHERE HE IS GOING TO WORK AND WHAT HE IS GOING TO DO. MR. PAYNE RECOMMENDED TO THE SUPERVISOR OF OPERATIONS THAT A CARETAKER BE LET GO BECAUSE OF HIS DRINKING. IF A CARETAKER IS NOT CLEANING THE ROOM PROPERLY, HE WOULD ASK HIM TO CLEAN IT PROPERLY. HE HAS DISCIPLINED FOR LATENESS, LENGTHY COFFEE BREAKS AND EARLY LEAVING. HE SPENDS MOST OF HIS DAY INSPECTING SINCE HE CONSIDERS IT IS HIS MAJOR JOB TO MAKE SURE THAT THE SCHOOL IS PROPERLY CLEAN AT ALL TIMES.

15. MR. PAYNE HAS NEVER DEMOTED OR TRANSFERRED ANYONE. HE DOES NOT SPEND ANY PART OF HIS DAY DOING PHYSICAL WORK AND HE KEEPS RECORDS OF SICK LEAVE, OVERTIME AND ABSENTEEISM. HE SENDS THESE RECORDS TO THE PLANT OFFICE. HE OFTEN AUTHORIZES OVERTIME AND ADVISES THE CARETAKERS



WHO ARE TO WORK OVERTIME. HOWEVER, THE PRINCIPAL OF THE SCHOOL WHERE HE WORKS SIGNS THE OVERTIME SLIP AND MR. PAYNE SENDS IT TO THE BOARD OFFICE. HE DECIDES WHICH SUPPLIES ARE NEEDED AND COMPILES AND SIGNS THE REQUISITION FORM.

16. ALL OF THE CARETAKERS GET TOGETHER AND WORK OUT A VACATION SCHEDULE WHICH WOULD BE ACCEPTABLE TO THE BOARD'S OFFICE AND ALSO TO MR. PAYNE. HE HAS NEVER HAD TO DECIDE WHICH OF THE TWO MEN SHOULD GO ON VACATION AT A PRESCRIBED TIME BECAUSE THEY HAVE ALWAYS BEEN ABLE TO WORK OUT THE VACATION SCHEDULE. HE HAS VERY RARELY WORKED OVERTIME BUT HAS BEEN PAID FOR WORKING OVERTIME. HE HAS ATTENDED TWO MEETINGS AT THE BOARD'S OFFICE WHICH WERE ALSO ATTENDED BY ANOTHER HEAD CARETAKER, THE BUSINESS ADMINISTRATOR, THE SUPERVISOR OF OPERATIONS, THE SUPERVISOR OF PLANT AND MAINTENANCE AND SCHOOL PRINCIPAL. THIS MEETING CONCERNED THE NON-SCHOOL USE OF SCHOOLS AND THE ROLE THAT IS REQUIRED TO BE DONE BY CARETAKERS IN THIS SITUATION.

17. THE SUPERVISOR OF OPERATIONS COMES TO MR. PAYNE'S SCHOOL EACH MONTH. WHEN A NEW CARETAKER IS SENT TO HIS SCHOOL, HE DECIDES WHERE THE CARETAKER WILL WORK AND WHAT HE WILL DO. HE ALLOWS CASUAL TIME OFF IF THE REASON SATISFIES HIM. IF A CARETAKER CONTINUES TO MISBEHAVE, HE WOULD REPORT THE MATTER TO THE PLANT OFFICE.

18. THE EVIDENCE OF GEORGE DERBYSHIRE INDICATES THAT HIS SUPERVISORS ARE THE SCHOOL PRINCIPAL AND THE SUPERVISOR OF OPERATIONS. HE HAS NEVER BEEN INVOLVED IN THE HIRING OF EMPLOYEES ALTHOUGH NEW EMPLOYEES HAVE JOINED THE RESPONDENT SINCE HE BECAME THE HEAD CARETAKER. WHEN NEW EMPLOYEES CAME TO HIS SCHOOL, THEY SEE HIM AND HE SHOWS THEM THE AREA WHERE THEY ARE TO WORK AND TELLS THEM WHAT THEY ARE REQUIRED TO DO. HE HAS NO VOICE IN WHAT SHIFT THEY WOULD WORK BUT HE IS REQUIRED TO DETERMINE IF THE NEW EMPLOYEE IS A CAPABLE CARETAKER. HE HAS BEEN ASKED ABOUT NEW CARETAKERS BY THE SUPERVISOR OF OPERATIONS.

19. TWO EMPLOYEES HAVE BEEN DISMISSED WHILE HE HAS BEEN THE HEAD CARETAKER, BUT HE HAS PLAYED NO ROLE IN THESE DISMISSALS. ON ONE OCCASION, HE CONTACTED THE SUPERVISOR OF OPERATIONS AND TOLD HIM THAT ONE CARETAKER WAS NOT DOING HIS WORK PROPERLY. SUBSEQUENTLY, THE SUPERVISOR OF OPERATIONS TELEPHONED HIM AND TOLD HIM THAT THIS MAN WOULD NOT BE COMING IN ANY MORE. HE DID NOT SUGGEST A REPLACEMENT AND ASKED THE PLANT OFFICE IF HE WOULD GET A REPLACEMENT. HE WAS TOLD THAT THE EMPLOYEE WHO HAD BEEN DISMISSED WOULD BE REPLACED AS SOON AS POSSIBLE. HE VERY SELDOM DISCIPLINES HIS EMPLOYEES. MR. DERBYSHIRE IS RESPONSIBLE FOR THE CLEANLINESS OF HIS SCHOOL AND MAKES HIS ROUNDS EVERY DAY. HE DOES GENERAL CARETAKING WORK HIMSELF AND MORE RECENTLY HE HAS SPENT MOST OF HIS DAY CLEANING THE SCHOOLS.

20. HE COMPLETES FORMS CONCERNING SICK LEAVE AND ABSENTEEISM AND SENDS THEM TO THE PLANT OFFICE EACH MONTH. THE CARETAKERS MAKE OUT THEIR OWN OVERTIME SHEETS AND GIVE THEM TO THE PRINCIPAL WHO SENDS THEM TO THE PLANT OFFICE OR THE BOARD'S OFFICE. WHILE MR. DERBYSHIRE

REQUISITIONS CARETAKING SUPPLIES, HE HAS NEITHER TRANSFERRED NOR PROMOTED EMPLOYEES. HE HAS NEVER RECOMMENDED DEMOTION OF AN EMPLOYEE. WITH RESPECT TO THE VACATION SCHEDULE, EACH CARETAKER FILLS OUT THE TIME HE WOULD LIKE FOR HIS VACATION AND THIS SCHEDULE GOES TO THE PLANT OFFICE. IT HAS NEVER BEEN NECESSARY TO DECIDE AMONG THE CARETAKERS WHICH CARETAKER SHOULD GO ON VACATION AT A PARTICULAR TIME BECAUSE OF A CONFLICT. HE HAS NEVER RECOMMENDED A WAGE INCREASE AND HAS ALLOWED CARETAKERS TIME OFF FOR UP TO HALF AN HOUR FOR WHICH THEY WOULD BE PAID BUT WHICH THEY WOULD HAVE TO MAKE UP LATER.

21. HE HAS WORKED OVERTIME BUT IT IS UP TO THE PLANT OFFICE, THE BOARD'S OFFICE AND THE PRINCIPAL TO DECIDE WHEN IT WAS NECESSARY TO WORK OVERTIME. MR. DERBYSHIRE HAS NEVER DECIDED THAT IT WAS NECESSARY TO WORK OVERTIME. THE INDIVIDUAL WHO IS TO WORK OVERTIME IS DETERMINED BY A SCHEDULE AND EACH MAN TAKES HIS TURN. HE HAS NO ACCESS TO CONFIDENTIAL INFORMATION. WHERE THE WORK IS NOT DONE PROPERLY, HE WOULD ADVISE THE CARETAKER RESPONSIBLE TO DO IT PROPERLY. IF HIS INSTRUCTIONS WERE NOT FOLLOWED, HE WOULD ADVISE THE PLANT MANAGER.

22. HE MAKES UP, SIGNS AND SENDS TO THE SCHOOL BOARD THE REPORT OF THE CARETAKERS' SICK LEAVE AND ABSENTEEISM. THE CARETAKERS MAKE OUT THEIR OWN OVERTIME. HE IS RESPONSIBLE TO MAKE SURE THAT THE OVERTIME REPORT IS FILLED OUT AND TAKEN TO THE PRINCIPAL. THE OVERTIME REPORT GOES TO THE SCHOOL BOARD. EACH CARETAKER PREPARES HIS OWN TIME SHEET AND MR. DERBYSHIRE CHECKS IT OVER BECAUSE IT GOES TO THE PRINCIPAL. HE IS RESPONSIBLE FOR REQUISITIONING CARETAKING SUPPLIES AND IS RESPONSIBLE FOR THE MAINTENANCE OF THE CARETAKING EQUIPMENT. WHERE A CARETAKER DOES A BAD JOB, HE REFERS THE MATTER TO THE SUPERVISOR OF OPERATIONS. THE BIGGEST PART OF HIS JOB IS INSPECTING THE SCHOOL EACH DAY.

23. THE EVIDENCE OF SYDNEY RICHARDSON INDICATES THAT HE SPENDS HIS TIME SUPERVISING AND DIRECTING THE CARETAKERS. HE HAS NOT BEEN INVOLVED IN HIRING OR DISMISSING EMPLOYEES. WHEN ONE OF THE CARETAKERS WAS NOT DOING HIS WORK PROPERLY, MR. RICHARDSON TALKED TO HIM AND TOLD HIM THAT HE SHOULD DO A BETTER JOB. HE SPOKE TO THE SUPERVISOR OF OPERATIONS AND THE AREA INSPECTOR ABOUT THIS MATTER. HE SPENDS LITTLE OF HIS TIME DOING PHYSICAL CARETAKING AND SPENDS HALF OF HIS TIME INSPECTING THE SCHOOL FOR CLEANLINESS. HE IS RESPONSIBLE FOR RECORDING CARETAKERS' TIME OFF EACH DAY AND HAS AUTHORIZED OVERTIME. WHEN HE AUTHORIZES THE OVERTIME, HE CHOOSES THE MEN, BUT IT IS ON A VOLUNTARY BASIS WHETHER THE MEN ACCEPT THE OVERTIME OR NOT. IF HE IS SHORT HANDED, HE CAN AUTHORIZE OVERTIME. HE KEEPS A RECORD OF HOW MUCH OVERTIME AN EMPLOYEE WORKS AND THE INDIVIDUAL CARETAKER SENDS IN HIS OWN OVERTIME SHEET AFTER MR. RICHARDSON HAS APPROVED IT.

24. HE IS NOT INVOLVED IN SCHEDULING VACATIONS SINCE EACH CARETAKER PUTS DOWN THE TIME HE WANTS AND MR. RICHARDSON GOES OVER IT TO MAKE SURE THAT THERE ARE NOT TOO MANY CARETAKERS OFF AT THE SAME TIME. HE SENDS THE SCHEDULE TO THE PLANT OFFICE. HE HAS RECOMMENDED A PROMOTION WHEN THERE WAS A VACANCY AND THE RECOMMENDED REPLACEMENT GOT

THE JOB. HE HAS NOT RECOMMENDED DEMOTION BUT HAS RECOMMENDED TO THE SUPERVISOR OF OPERATIONS OR THE AREA SUPERVISOR THAT SOMEONE BE TRANSFERRED. HE HAS NO ACCESS TO PERSONAL FILES AND ORDERS CARETAKING SUPPLIES BY FILLING OUT A REQUISITION WHICH HE SIGNS. HE IS NOT ABLE TO DISMISS AN EMPLOYEE BUT HE COULD HAVE AN INFLUENCE ON SOMEONE BEING DISMISSED.

25. IF A CARETAKER IS OFF WORK AND THE SCHOOL IS SHORT OF CARETAKERS, MR. RICHARDSON WOULD PERFORM THE MISSING MAN'S DUTIES. BUT IF HE HAD THE FULL STAFF, HE WOULD NOT DO ANY OF THEIR WORK. THE PLANT OFFICE HAS TOLD THE WITNESS HE CAN AUTHORIZE OVERTIME. HE IS RESPONSIBLE FOR MAKING REPORTS ON SICK LEAVE AND ABSENTEEISM AND HE CERTIFIES THAT THE OVERTIME SLIPS ARE ACCURATE. THE OVERTIME SLIPS FOR FUNCTIONS ARE MADE OUT BY THE CARETAKER AND MR. RICHARDSON CERTIFIES THAT THEY ARE CORRECT. HE ALLOWS CASUAL TIME OFF ON HIS OWN AND HAS THE EMPLOYEE MAKE IT UP LATER. HE HAS THE AUTHORITY TO DISCIPLINE AND HAS EXERCISED THAT AUTHORITY. WHEN A NEW MAN COMES, HE DOES NOT DECIDE WHAT HOURS THAT MAN WILL WORK. ANY REARRANGEMENTS ON THE SHIFTS IS NOT DONE BY MR. RICHARDSON.

26. THE EVIDENCE OF GEORGE ORR INDICATES THAT HE REPORTS TO THE SCHOOL PRINCIPAL AND THE SUPERVISOR OF OPERATIONS. MR. ORR INDICATED THAT HE IS INVOLVED IN THE HIRING TO THE EXTENT THAT HE MENTIONED A MAN'S NAME TO THE SUPERVISOR OF OPERATIONS. HOWEVER, THIS MAN WAS NOT HIRED BY THE RESPONDENT. HE HAS SAT IN ON AN INTERVIEW FOR SIX CANDIDATES WHO WERE INTERVIEWED FOR THE POSITION OF CARETAKER. MR. ORR AND THE SUPERVISOR OF OPERATIONS ASKED QUESTIONS. HE MENTIONED TWO OR THREE NAMES TO THE SUPERVISOR OF OPERATIONS AND ONE OF THOSE MEN WAS HIRED. HOWEVER, THIS MAN TURNED THE JOB DOWN AND THE MAN EVENTUALLY TAKEN ON WAS TRANSFERRED FROM ANOTHER SCHOOL AND WAS NOT ONE OF THE SIX INTERVIEWED.

27. MR. ORR HAS NEVER HIRED EMPLOYEES FOR THE RESPONDENT AND HAS NO SAY CONCERNING THE TRANSFERRING OF FEMALE CARETAKERS. HE SPOTTED A MAN WHO WAS DRINKING OFF THE JOB AND WHO, AS A RESULT, DID NOT COME IN TO WORK. THE WITNESS TURNED IN THIS MAN'S ABSENTEEISM IN HIS REGULAR MONTHLY REPORT AND ALSO TALKED TO THE SUPERVISOR OF OPERATIONS ABOUT THIS MAN. IT APPEARS THAT MR. ORR THOUGHT THAT THIS MAN COULD USE UP HIS HOLIDAYS TO MAKE UP FOR HIS ABSENTEEISM. HOWEVER, THIS DID NOT HAPPEN AND THE MAN'S EMPLOYMENT WAS TERMINATED. MR. ORR DID NOT MAKE THIS DECISION AND DOES NOT KNOW WHO DID. ON ONE OCCASION, HE TOLD AN EMPLOYEE WHO SOMETIMES CAME IN LATE TO BE MORE PUNCTUAL. WHEN THE SUPERVISOR OF OPERATIONS AND THE AREA INSPECTORS COME TO HIS SCHOOL, THEY SEE HIM.

28. HE SPENDS ABOUT ONE HOUR PER DAY INSPECTING THE CLEANLINESS OF THE SCHOOL. HE HAS NO DESIGNATED CARETAKING WORK AND DOES NOT DO GENERAL CARETAKING WORK UNLESS HE IS SHORT STAFFED. HE SPENDS ABOUT THREE QUARTERS OF AN HOUR EACH DAY LOOKING AFTER THE BOILERS. HIS BOOK WORK CONSISTS OF COMPLETING FORMS, SUCH AS SICK LEAVE FORMS WHICH HE



SENDS TO THE BOARD'S OFFICE. MR. ORR COMPLETES OVERTIME REPORTS FOR THE REGULAR STAFF. THE CASUAL HELP REPORT THEIR OWN OVERTIME. WHEN THE BOARD ASKS MR. ORR FOR HELP, HE DECIDES WHICH MAN WILL WORK OVERTIME, HOW MANY MEN WILL WORK OVERTIME AND HOW LONG THEY WILL WORK. HE HAS RECOMMENDED THAT ONE FEMALE CARETAKER BE TRANSFERRED AND HAS RECOMMENDED A REPLACEMENT WHEN ONE EMPLOYEE LEFT. HE HAS NOT RECOMMENDED EITHER PROMOTION OR DEMOTION.

29. THE HEAD CARETAKERS OF THE RESPONDENT'S SECONDARY SCHOOLS CLEARLY TAKE NO PART IN THE PROCESS OF HIRING, TRANSFERRING OR DISMISSING CARETAKERS, ALTHOUGH, IN SOME INSTANCES THEY MAY WELL OFFER OBSERVATIONS OR RECOMMENDATIONS TO THE SUPERVISOR OF OPERATIONS. IT APPEARS, HOWEVER, THAT THESE OBSERVATIONS AND RECOMMENDATIONS GO UNHEEDED UNLESS FOUND TO BE IN AGREEMENT WITH THE VIEWS OF THE RESPONDENT'S MANAGEMENT.

30. THE HEAD CARETAKERS OF THE RESPONDENT'S SECONDARY SCHOOLS ENGAGE IN VARYING AMOUNTS OF PHYSICAL WORK. THERE WAS NO EXPLANATION OFFERED TO EXPLAIN THE VARIATION IN THE PHYSICAL WORK PERFORMED BY MR. ANDERSON AND MR. ORR. WHEN NECESSARY, HOWEVER, THOSE HEAD CARETAKERS WHO PERFORM VERY LITTLE PHYSICAL WORK WILL DO SUCH WORK.

31. MOST OF THE HEAD CARETAKERS OF THE RESPONDENT'S SECONDARY SCHOOL STATED THAT THEY DISCIPLINED EMPLOYEES WHEN THE OCCASION AROSE. HOWEVER, WHEN THE EVIDENCE ON THIS POINT IS READ IN THE CONTEXT OF ALL THE EVIDENCE, IT IS READILY APPARENT THAT SUCH DISCIPLINE CONSISTS OF ACTS OF MINOR SUPERVISION BY THE HEAD CARETAKERS.

32. THE HEAD CARETAKERS OF THE RESPONDENT'S SECONDARY SCHOOLS ARE PART OF THE CONDUIT BY WHICH OVERTIME WORK IS SANCTIONED BY THE RESPONDENT. IN MOST INSTANCES THE PERFORMANCE OF OVERTIME WORK APPEARS TO BE ACTIVATED BY EITHER THE SUPERINTENDENT OF OPERATIONS OR THE APPROPRIATE SCHOOL PRINCIPAL. MR. RICHARDSON AND MR. PAYNE STATED THAT THEY "AUTHORIZE" OVERTIME. THERE WAS NO SUGGESTION, HOWEVER, THAT MESSRS. RICHARDSON AND PAYNE EXERCISE THIS FUNCTION OF AUTHORIZING OVERTIME SOLELY ON THEIR OWN JUDGEMENT OR THAT THEY DID THIS AUTHORIZATION OF OVERTIME WITHOUT THE APPROVAL OF EITHER THE APPROPRIATE SCHOOL PRINCIPAL OR THE SUPERINTENDENT OF OPERATIONS. IT IS ALSO TO BE NOTED IN CONNECTION WITH OVERTIME WORK THAT THE HEAD CARETAKERS HAVE RECEIVED NO GUIDANCE ON THE BASIS FOR ASSIGNING SUCH WORK. MOST OF THE HEAD CARETAKERS HAVE APPARENTLY EVOLVED A SYSTEM OF ASSIGNMENT WITH THE CARETAKERS WHO WORK WITH THEM.

33. THE HEAD CARETAKERS OF THE RESPONDENT'S SECONDARY SCHOOLS DO NOT PREPARE WRITTEN EVALUATIONS OF THE CARETAKERS WHO WORK WITH THEM AND DO NOT ATTEND MEETINGS OF MANAGEMENT WHERE MATTERS OF POLICY ARE DISCUSSED. THE HEAD CARETAKERS APPEAR TO HAVE EVOLVED THEIR OWN WORKING RELATIONSHIP WITH THE CARETAKERS AND TO HAVE NEVER RECEIVED A DESCRIPTION OF THEIR JOBS UP TO THE TIME OF THE MAKING OF THIS APPLICATION. THE EVIDENCE OF MR. PAYNE ON THIS LAST-MENTIONED TOPIC POINTS

OUT THIS STATE OF AFFAIRS WHEN HE STATED THAT "HE PRESUMED HE WAS IN CHARGE OF THE CARETAKERS."

34. AFTER THE DATE OF THE MAKING OF THIS APPLICATION, THE RESPONDENT PREPARED A DOCUMENT ENTITLED "DUTIES - HEAD CARETAKER EMPLOYED IN A SECONDARY SCHOOL". THE RESPONDENT FAILED TO FORMALIZE THE DUTIES AND RESPONSIBILITIES OF THE HEAD CARETAKERS OF ITS SECONDARY SCHOOLS UNTIL AFTER THE DATE OF THE MAKING OF THIS APPLICATION FOR CERTIFICATION. THE FAILURE OF AN EMPLOYER TO CLEARLY INFORM ITS PERSONNEL OF THEIR DUTIES PRIOR TO THE MAKING OF AN APPLICATION FOR CERTIFICATION OF NECESSITY WEIGHS HEAVILY AGAINST ITS CLAIMS WHEN THE STATUS OF AN EMPLOYEE UNDER THE LABOUR RELATIONS ACT IS IN QUESTION. REFERENCE IS MADE TO THE RIVERVIEW HEALTH ASSOCIATION CASE, OLRB M.R. JUNE 1966, P. 743, TO THE BROCKVILLE GENERAL HOSPITAL CASE, OLRB M.R. JUNE 1967, P. 776 AND TO THE BURLINGTON-NELSON HOSPITAL CASE, OLRB M.R. JANUARY 1971, P. 2.

35. HAVING REGARD TO ALL OF THE EVIDENCE BEFORE IT, THE BOARD FINDS THAT THE HEAD CARETAKERS OF THE RESPONDENT'S SECONDARY SCHOOLS SERVE ESSENTIALLY AS A CONDUIT FOR THE INSTRUCTIONS OF MANAGEMENT, THAT THEIR SUPERVISORY ROLE IS LIMITED TO WELL-DEFINED AREAS WHICH ARE CLOSELY CONTROLLED BY MANAGEMENT AND THAT THEY DO NOT EXERCISE ANY INDEPENDENT JUDGMENT OR DECISION MAKING EXCEPT IN AREAS WHICH ARE STRICTLY LIMITED BY CUSTOM AND BY MANAGEMENT.

36. ACCORDINGLY, THE BOARD FINDS THAT THE PERSONS CLASSIFIED BY THE RESPONDENT AS HEAD CARETAKERS OF SECONDARY SCHOOLS NEITHER EXERCISE MANAGERIAL FUNCTIONS NOR ARE EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT.

37. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF FRONTENAC ENGAGED IN MAINTENANCE SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR AND OFFICE STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

38. FOR THE PURPOSES OF CLARITY THE BOARD DECLARES THAT THE PERSONS CLASSIFIED BY THE RESPONDENT AS HEAD CARETAKERS OF SECONDARY SCHOOLS ARE INCLUDED IN THE BARGAINING UNIT.

39. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN SIXTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JULY 14, 1972, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

40. A CERTIFICATE WILL ISSUE TO THE APPLICANT.







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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING JANUARY 1973

BARGAINING AGENTS CERTIFIED DURING JANUARY

No Vote Conducted

18764-70-R: CSAO NATIONAL (INC.) (APPLICANT) V. THE MISSISSAUGA HOSPITAL (RESPONDENT).

UNIT: "ALL MEDICAL LABORATORY TECHNICIANS EMPLOYED BY THE RESPONDENT IN ITS MEDICAL LABORATORIES AT MISSISSAUGA, SAVE AND EXCEPT CHIEF TECHNOLOGIST AND PERSONS ABOVE THE RANK OF CHIEF TECHNOLOGIST, MEDICAL LABORATORY TECHNOLOGY STUDENTS, OFFICE AND CLERICAL STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (36 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (THE BOARD FURTHER NOTED THE AGREEMENT OF THE PARTIES THAT ECG AND EEG TECHNICIANS, RADIO-ISOTOPE TECHNOLOGISTS, LABORATORY AIDES, MORGUE ATTENDANTS AND PRACTISING MEMBERS OF THE MEDICAL AND NURSING PROFESSION ARE NOT INCLUDED IN THE BARGAINING UNIT.).

18801-70-R: CSAO NATIONAL (INC.) (APPLICANT) V. ROYAL VICTORIA HOSPITAL OF BARRIE, INC. (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (INTERVENER).

UNIT: "ALL MEDICAL LABORATORY TECHNOLOGISTS, MEDICAL LABORATORY TECHNICIANS AND LABORATORY ASSISTANTS EMPLOYED BY THE RESPONDENT IN ITS MEDICAL LABORATORIES AT BARRIE, SAVE AND EXCEPT ASSISTANT CHIEF TECHNOLOGISTS, PERSONS ABOVE THE RANK OF ASSISTANT CHIEF TECHNOLOGIST, STUDENTS, OFFICE AND CLERICAL STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIODS, AND PERSONS COVERED BY SUBSISTING COLLECTIVE AGREEMENTS BETWEEN THE RESPONDENT AND THE SERVICE EMPLOYEES UNION LOCAL 204 AND THE RESPONDENT AND THE INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796." (23 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR PURPOSES OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT LABORATORY ASSISTANTS (EKG TECHNICIANS) AND MORGUE ATTENDANT ARE NOT INCLUDED IN THE BARGAINING UNIT.).

1345-71-R: MECHANICAL CONTRACTORS ASSOCIATION OF TORONTO (APPLICANT) V. LOCAL 46, THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA (RESPONDENT).

UNIT: "ALL EMPLOYERS OF PLUMBERS, PLUMBERS' APPRENTICES, STEAMFITTERS, STEAMFITTERS' APPRENTICES AND WELDERS FOR WHOM THE RESPONDENT HAS BARGAINING RIGHTS IN THE JUDICIAL DISTRICT OF YORK, THAT PORTION OF ONTARIO

COUNTY LYING WEST OF THE PICKERING WHITBY TOWNSHIPS LINE, PEEL COUNTY, THAT PORTION OF HALTON COUNTY LYING SOUTH OF HIGHWAY 401 AND EAST OF THE SEVENTH LINE AND DUFFERIN COUNTY IN THE INDUSTRIAL, COMMERCIAL AND INSTITUTIONAL SECTOR OF THE CONSTRUCTION INDUSTRY." (NO EMPLOYEES IN THE UNIT).

[1973] 2 OLRB M.R. - PAGE 22.

2223-72-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE FRONTENAC COUNTY BOARD OF EDUCATION (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF FRONTENAC ENGAGED IN MAINTENANCE SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR AND OFFICE STAFF." (221 EMPLOYEES IN THE UNIT). (FOR THE PURPOSES OF CLARITY THE BOARD DECLARED THAT THE PERSONS CLASSIFIED BY THE RESPONDENT AS HEAD CARE-TAKERS OF SECONDARY SCHOOLS ARE INCLUDED IN THE BARGAINING UNIT.).

[1973] 2 OLRB M.R. - PAGE 74.

2501-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. CAMPBELLFORD MEMORIAL HOSPITAL (RESPONDENT) V. ONTARIO BRANCH, CANADIAN PHYSIOTHERAPY ASSOCIATION (INTERVENER) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT #3: "ALL TECHNICAL EMPLOYEES OF THE RESPONDENT AT CAMPBELLFORD, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIODS." (31 EMPLOYEES IN THE UNIT). (FOR PURPOSES OF CLARITY, THE BOARD DECLARED THAT LABORATORY, CARDIOLOGY AND X-RAY TECHNICIANS ARE INCLUDED IN BARGAINING UNIT #3.).

(BARGAINING UNIT #1 & #2 - SEE CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE).

2543-72-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. BENDIX-WESTINGHOUSE AUTOMOTIVE AIR BRAKE COMPANY OF CANADA LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, PRIVATE SECRETARY TO THE PLANT MANAGER AND SALES STAFF." (14 EMPLOYEES IN THE UNIT).

2721-72-R: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS, LOCAL 419 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. DISPOSAL SERVICES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO AND AT

MAPLE IN THE TOWNSHIP OF VAUGHAN, SAVE AND EXCEPT FOREMEN, DISPATCHERS, PERSONS ABOVE THE RANKS OF FOREMAN AND DISPATCHER, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (169 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

[1973] 2 OLRB M.R. - PAGE 2.

2791-72-R: NURSES' ASSOCIATION OXFORD HEALTH UNIT (APPLICANT) V. OXFORD HEALTH UNIT (RESPONDENT) V. EMPLOYEE (OBJECTOR).

UNIT #1: "ALL REGISTERED AND GRADUATE NURSES IN THE EMPLOY OF THE RESPONDENT, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK (HEREINAFTER REFERRED TO AS BARGAINING UNIT #1)." (12 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

(BARGAINING UNIT #2 - SEE APPLICATION CERTIFIED SUBSEQUENT TO POST-HEARING VOTE).

2816-72-R: FUEL, BUS, LIMOUSINE AND PETROLEUM DRIVERS AND ALLIED EMPLOYEES, LOCAL 352 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. HARROLD'S COAL COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN THE DELIVERY OF PETROLEUM PRODUCTS AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT." (NO EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

2860-72-R: UNITED PAPERWORKERS INTERNATIONAL UNION (APPLICANT) V. ATLANTIC PACKAGING COMPANY (RESPONDENT) V. PRINTING SPECIALTIES & PAPER PRODUCTS UNION LOCAL 466 (INTERVENER) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWN OF MISSISSAUGA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (24 EMPLOYEES IN THE UNIT).

2905-72-R: TEAMSTERS LOCAL 990 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. DONOVAN CONSTRUCTION COMPANY OF CANADA LTD. (RESPONDENT).

UNIT: "ALL TRUCK DRIVERS IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF RAINY RIVER, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

2910-72-R: TEAMSTERS LOCAL 990 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. DONOVAN CONSTRUCTION COMPANY OF CANADA LTD. (RESPONDENT).



UNIT: "ALL TRUCK DRIVERS IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF KENORA, INCLUDING THE PATRICIA PORTION, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

2925-72-R: INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES, UNION LOCAL 1891 (APPLICANT) V. LINTON COLEMAN CORPORATION LTD. (RESPONDENT).

UNIT: "ALL PAINTERS AND PAINTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT). (FOR THE PURPOSE OF CLARITY, THE BOARD DECLARED THAT DRYWALL TAPERS ARE INCLUDED IN THE BARGAINING UNIT.).

2949-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE TOWN OF COBOURG (RESPONDENT).

UNIT: "ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT AT COBOURG, SAVE AND EXCEPT TOWN CLERK, PERSONS ABOVE THE RANK OF TOWN CLERK, SECRETARY TO THE TOWN CLERK AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT." (6 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

2953-72-R: BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 183, A.F. OF L., C.I.O., C.L.C. (APPLICANT) V. VERSASERVICES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT THE TRENTON MEMORIAL HOSPITAL IN TRENTON, SAVE AND EXCEPT FOREMEN, WORKING SUPERVISORS, PERSONS ABOVE THE RANKS OF FOREMAN AND WORKING SUPERVISOR, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (16 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

2961-72-R: INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (APPLICANT) V. SUDBURY HOSPITAL SERVICES (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SUDBURY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND EMPLOYEES COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 796." (32 EMPLOYEES IN THE UNIT).

2963-72-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA LOCAL UNION 93 (APPLICANT) V. PLANCHER MODERNE (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN THE INSTALLATION OF FLOORING IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN. (9 EMPLOYEES IN THE UNIT).

2966-72-R: GRAPHIC ARTS INTERNATIONAL UNION, LOCAL 242 (APPLICANT) V. DUNCAN LITHOGRAPHING COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE CANADIAN LITHOGRAPHER'S ASSOCIATION INC. AND COUNCIL OF PRINTING INDUSTRIES OF CANADA AS EMPLOYER ASSOCIATIONS AND VARIOUS LOCALS OF THE LITHOGRAPHERS AND PHOTOENGRAVERS INTERNATIONAL UNION." (23 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

2975-72-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. DONOVAN CONSTRUCTION COMPANY OF CANADA LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE DISTRICT OF KENORA, INCLUDING THE PATRICIA PORTION ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (36 EMPLOYEES IN THE UNIT).

2980-72-R: BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 478, AFFILIATED WITH THE A.F. OF L., C.I.O., C.L.C. (APPLICANT) V. HUNTSVILLE DISTRICT MEMORIAL HOSPITAL (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HUNTSVILLE, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, PERSONS EMPLOYED IN THE DIETARY DEPARTMENT, TECHNICAL PERSONNEL, SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (57 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR THE PURPOSE OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE TERM TECHNICAL PERSONNEL INCLUDES X-RAY TECHNICIANS, LABORATORY TECHNICIANS AND PHYSIOTHERAPISTS.).

2986-72-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. CANADIAN INDUSTRIES LIMITED (RESPONDENT).

UNIT: "ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT AT NOBEL, SAVE AND EXCEPT SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR OR FOREMAN, SECRETARY TO THE WORKS MANAGER AND EMPLOYEES COVERED UNDER SUBSISTING COLLECTIVE AGREEMENTS." (10 EMPLOYEES IN THE UNIT).

2987-72-R: INTERNATIONAL UNION UNITED PLANT GUARD WORKERS OF AMERICA LOCAL 1962 (APPLICANT) v. CHRYSLER CANADA LTD., NATIONAL PARTS DEPOT (RESPONDENT).

UNIT: "ALL SECURITY GUARDS EMPLOYED BY THE RESPONDENT AT ITS NATIONAL PARTS DEPOT IN THE TOWN OF MISSISSAUGA, SAVE AND EXCEPT SERGEANTS, PERSONS ABOVE THE RANK OF SERGEANT AND ALL OTHER EMPLOYEES." (12 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

2989-72-R: LAUNDRY, DRY CLEANING & DYE HOUSE WORKERS' INTERNATIONAL UNION, LOCAL 351 (APPLICANT) v. LONDON HOSPITAL LINEN SERVICE INCORPORATED (RESPONDENT) v. LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, S.E.I.U., A.F.L. - C.I.O. - C.L.C. (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT FOREMEN, SUPERVISORS, PERSONS ABOVE THE RANKS OF FOREMAN AND SUPERVISOR, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (64 EMPLOYEES IN THE UNIT).

2991-72-R: DRIVER INSTRUCTORS' UNION, LOCAL 1669, CLC (APPLICANT) v. HOWARD'S SCHOOL OF SAFE DRIVING (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING IN AND OUT OF METROPOLITAN TORONTO, SAVE AND EXCEPT MANAGER, PERSONS ABOVE THE RANK OF MANAGER, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (10 EMPLOYEES IN THE UNIT).

2993-72-R: SERVICE EMPLOYEES' UNION, LOCAL 210 AFFILIATED WITH SERVICE EMPLOYEES' INTERNATIONAL UNION AFL-CIO-CLC (APPLICANT) v. THE RELIGIOUS HOSPITALLERS OF HOTEL-DIEU OF ST. JOSEPH OF THE DIOCESE OF LONDON (RESPONDENT) v. EMPLOYEE (OBJECTOR).

UNIT: "ALL LAY EMPLOYEES OF THE RESPONDENT AT WINDSOR EMPLOYED IN ITS MEDICAL LABORATORIES AND RADIOLOGY DEPARTMENTS AS GRADUATE REGISTERED TECHNOLOGISTS, GRADUATE REGISTERED TECHNICIANS, GRADUATE NON-REGISTERED TECHNOLOGISTS, GRADUATE NON-REGISTERED TECHNICIANS AND LABORATORY ASSISTANTS, SAVE AND EXCEPT CHARGE TECHNOLOGISTS AND CHARGE TECHNICIANS, PERSONS ABOVE THE RANK OF CHARGE TECHNOLOGIST AND CHARGE TECHNICIAN, INSTRUCTORS, GRADUATE PHARMACISTS, BIOCHEMISTS, OFFICE AND CLERICAL STAFF, STUDENTS IN TRAINING, STUDENTS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, PERSONS COVERED BY A CERTIFICATE ISSUED TO THE NURSES' ASSOCIATION HOTEL-DIEU OF ST. JOSEPH AND PERSONS COVERED BY SUBSISTING COLLECTIVE AGREEMENTS BETWEEN THE RESPONDENT AND THE APPLICANT AND THE RESPONDENT AND THE CANADIAN UNION OF OPERATING ENGINEERS." (53 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

2995-72-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) v. F. A. TUCKER (ONTARIO) LIMITED (RESPONDENT).



UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF LENNOX AND ADDINGTON, FRONTENAC AND THE TOWNSHIPS OF REAR OF LEEDS AND LANSDOWNE, FRONT OF LEEDS AND LANSDOWNE, REAR OF YONGE AND ESCOTT, FRONT OF YONGE AND FRONT OF ESCOTT IN THE COUNTY OF LEEDS ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

2996-72-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. UNI RISE CONSTRUCTION LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

2998-72-R: UNITED TEXTILE WORKERS OF AMERICA (APPLICANT) V. HANSON MILLS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT RENFREW, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (36 EMPLOYEES IN THE UNIT).

3000-72-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. MODERN BUILDING CLEANING DIVISION OF DUSTBANE ENTERPRISES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AT ITS BRANCH AT THE HEARST BOARD OF EDUCATION AT HEARST, SAVE AND EXCEPT FOREMEN AND THOSE ABOVE THE RANK OF FOREMAN." (8 EMPLOYEES IN THE UNIT).

3002-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 527 (APPLICANT) V. SOTRAMONT INCORPORATED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

3013-72-R: CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS (APPLICANT) V. INLAND CARTAGE & EQUIPMENT RENTALS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN MISSISSAUGA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (6 EMPLOYEES IN THE UNIT).

3014-72-R: CANADIAN BROTHERHOOD OF RAILWAY TRANSPORT AND GENERAL WORKERS (APPLICANT) V. GRAY TRUCK LEASING (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN MISSISSAUGA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (4 EMPLOYEES IN THE UNIT).

3019-72-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 625 (APPLICANT) V. PURIFICATI CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF ESSEX AND KENT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

3022-72-R: NORTHERN ONTARIO ELECTRICAL UNION (APPLICANT) V. R. J. GLADU ELECTRIC LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SUDBURY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (9 EMPLOYEES IN THE UNIT).

3023-72-R: CANADIAN CONSTRUCTION, BUILDING MAINTENANCE AND GENERAL WORKERS' UNION (N.C.C.L.) (APPLICANT) V. L'ABBE CONSTRUCTION LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS, CARPENTERS' APPRENTICES AND CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE UNITED COUNTIES OF STORMONT, DUNDAS AND GLENGARRY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

3031-72-R: THE BRICKLAYERS MASONS AND PLASTERERS INTERNATIONAL UNION OF AMERICA (APPLICANT) V. CULP BROS. LTD. (RESPONDENT) V. LOCAL 151 OF THE OPERATIVE PLASTERERS' AND CEMENT MASONS INTERNATIONAL ASSOCIATION, LONDON, ONTARIO (INTERVENER).

UNIT: "ALL PLASTERERS AND PLASTERERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND PERSONS COVERED BY A COLLECTIVE AGREEMENT MADE ON MAY 1, 1971 BETWEEN THE RESPONDENT AND THE BRICKLAYERS', MASONS', AND PLASTERERS' INTERNATIONAL UNION, LOCAL NO. 12, ONTARIO." (2 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES).

3038-72-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) V. INTERNORTH CONSTRUCTION COMPANY LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

3051-72-R: INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA (APPLICANT) V. BREWERS' WAREHOUSING COMPANY LIMITED (RESPONDENT) V. EMPLOYEE (OBJECTOR).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS WAREHOUSE OPERATIONS IN METROPOLITAN TORONTO, SAVE AND EXCEPT MANAGER, FOREMEN, PERSONS ABOVE THE RANKS OF MANAGER AND FOREMAN, OFFICE STAFF, AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT." (8 EMPLOYEES IN THE UNIT).

3057-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. BESTVIEW SERVICES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT THE METRO LODGE NURSING HOME IN ST. CATHARINES, SAVE AND EXCEPT MANAGERS, PERSONS ABOVE THE RANK OF MANAGER AND OFFICE STAFF." (17 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

3058-72-R: OIL & GAS TECHNICIANS, SERVICE, DOMESTIC & GENERAL WORKERS UNION, LOCAL 1267 (APPLICANT) V. MACKELLOP JANITORIAL & SUPPLY LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT AND WORKING OUT OF METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (5 EMPLOYEES IN THE UNIT).

3064-72-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. HAMMANT CAR & ENGINEERING LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (22 EMPLOYEES IN THE UNIT).

3065-72-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. PLANT NATIONAL LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (20 EMPLOYEES IN THE UNIT).

3069-72-R: LOCAL 12-L, TORONTO, GRAPHIC ARTS INTERNATIONAL UNION (APPLICANT) V. HERITAGE PRESS CO. LTD. (RESPONDENT).

UNIT: "ALL LITHOGRAPHERS, THEIR APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT IN MISSISSAUGA, SAVE AND EXCEPT NON-WORKING FOREMEN



AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (8 EMPLOYEES IN THE UNIT).

3073-72-R: GENERAL TRUCK DRIVERS' UNION LOCAL 938 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. ROTHSAY CONCENTRATES CO. LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT DISPATCHERS, PERSONS ABOVE THE RANK OF DISPATCHER, AND OFFICE AND SALES STAFF." (5 EMPLOYEES IN THE UNIT).

3075-72-R: DUBREUIL BROTHERS EMPLOYEES ASSOCIATION (APPLICANT) V. DUBREUIL BROTHERS LIMITED (RESPONDENT).

UNIT #1: "ALL EMPLOYEES OF THE RESPONDENT AT DUBREUILVILLE EMPLOYED IN ITS SAWMILL, PLANING MILL, YARD, COOKERY, MAINTENANCE, TRANSPORTATION AND HAULING OPERATIONS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (276 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

UNIT #2: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN ITS BUSH OPERATIONS IN THE TOWNSHIP OF ST. JULIAN, TOWNSHIP 32, RANGE 26, AND TOWNSHIP 31, RANGE 27, ALL IN THE DISTRICT OF ALGOMA, AND THOSE TOWNSHIPS IMMEDIATELY ADJACENT TO THE AFOREMENTIONED TOWNSHIPS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, SCALERS, AND OFFICE AND SALES STAFF." (3 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

3076-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. PORT COLBORNE AMBULANCE SERVICE CENTRE (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PORT COLBORNE, SAVE AND EXCEPT MANAGER, PERSONS ABOVE THE RANK OF MANAGER, AND OFFICE STAFF." (13 EMPLOYEES IN THE UNIT).

3085-72-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. J. & H. CONSTRUCTION CO. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS, CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF NIAGARA AND THE COUNTY OF HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

3088-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. CANADIAN STORE FIXTURES LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WELLINGTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

3089-72-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. SCOTT-JACKSON CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF WENTWORTH AND THE TOWNSHIP OF NASSAGAWEYA AND THE TOWN OF BURLINGTON IN THE COUNTY OF HALTON ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

3095-72-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) V. PERMANENT PROTECTIVE COATINGS LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WATERLOO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

3122-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837 (APPLICANT) V. CAMERON - MC INDOO LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF NIAGARA AND THE COUNTY OF HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

3123-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 527 (APPLICANT) V. KINELL CONSTRUCTION COMPANY LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN, AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (10 EMPLOYEES IN THE UNIT).

#### APPLICATIONS CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

2338-72-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. PATCHOGUE: PLYMOUTH HAWKESBURY MILLS, A DIVISION OF AMOCO CANADA PETROLEUM COMPANY LTD. (RESPONDENT) V. PATCHOGUE PLYMOUTH EMPLOYEES ASSOCIATION (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAWKESBURY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION." (246 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		241
NUMBER OF PERSONS WHO CAST BALLOTS	231	
BALLOTS SEGREGATED AND NOT COUNTED	1	
NUMBER OF SPOILED BALLOTS	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	154	
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	64	
NUMBER OF BALLOTS MARKED NO TRADE UNION	11	

2834-72-R: LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, S.E.I.U., AFL-CIO-CLC (APPLICANT) V. KOMOKA NURSING HOMES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT KOMOKA, SAVE AND EXCEPT PROFESSIONAL NURSING STAFF, SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANKS OF SUPERVISOR AND FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (64 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		35
NUMBER OF PERSONS WHO CAST BALLOTS	34	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	19	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	15	

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2875-72-R: INTERNATIONAL UNION, UNITED PLANT GUARD WORKERS OF AMERICA, AMALGAMATED PLANT GUARDS, LOCAL 1958 (APPLICANT) V. WACKENHUT OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL SECURITY GUARDS EMPLOYED BY THE RESPONDENT FOR NOT MORE THAN 24 HOURS PER WEEK IN THE COUNTY OF ESSEX, AT OR WORKING OUT OF THE RESPONDENT'S WINDSOR OFFICE, SAVE AND EXCEPT INSPECTORS, PERSONS ABOVE THE RANK OF INSPECTOR, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (185 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		73
NUMBER OF PERSONS WHO CAST BALLOTS	28	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	25	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	3	



2918-72-R: INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, AFL-CIO, CLC (APPLICANT) v. COCA-COLA LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PETERBOROUGH, SAVE AND EXCEPT SALES SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANKS OF SALES SUPERVISOR AND FOREMAN, AND OFFICE STAFF." (33 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		33
NUMBER OF PERSONS WHO CAST BALLOTS	33	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	18	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	15	

2922-72-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) v. INTERNATIONAL COOPERAGE COMPANY OF CANADA LIMITED (RESPONDENT) v. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 2679 (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT MILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF. (32 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		25
NUMBER OF PERSONS WHO CAST BALLOTS	22	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	17	
NUMBER OF BALLOTS MARKED IN FAVOUR INTERVENER	5	

2936-72-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) v. H. B. ETLIN COMPANY LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (51 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		53
NUMBER OF PERSONS WHO CAST BALLOTS	48	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	39	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	9	

3036-72-R: MARBLE MASONS TILE LAYERS AND TERRAZZO WORKERS UNION No. 31 (APPLICANT) v. KINGSWAY PLASTERING CO. LTD. (RESPONDENT) v. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (INTERVENER #1) v. OPERATIVE PLASTERERS AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 117 (INTERVENER #2).

UNIT: "ALL PLASTERERS AND PLASTERERS' APPRENTICES OF THE RESPONDENT EMPLOYED AT OR WORKING OUT OF METROPOLITAN TORONTO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (13 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	11
NUMBER OF PERSONS WHO CAST BALLOTS	11
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	7
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER #2	4

#### APPLICATIONS CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

1791-71-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. THE WELLAND COUNTY ROMAN CATHOLIC SEPARATE SCHOOL BOARD (RESPONDENT) v. EMPLOYEE (OBJECTOR).

UNIT: "ALL OFFICE AND CLERICAL STAFF REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WELLAND, SAVE AND EXCEPT DEPARTMENT HEADS, PERSONS ABOVE THE RANK OF DEPARTMENT HEAD, CONFIDENTIAL SECRETARY TO SUPERINTENDENT OF EDUCATION AND SECRETARY TREASURER, CONFIDENTIAL SECRETARY TO THE BOARD, GENERAL CLERK - PERSONNEL DEPARTMENT, PERSONS COVERED BY THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL #1317." (30 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	24
NUMBER OF PERSONS WHO CAST BALLOTS	22
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	18
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	4

2219-72-R: LUMBER AND SAWMILL WORKERS' UNION, LOCAL 2995 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) v. ARROW TIMBER COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS WOODS OPERATIONS IN THE TOWNSHIP OF FUSHIMI, AND THOSE TOWNSHIPS IMMEDIATELY ADJACENT THERETO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, SCALERS, AND OFFICE STAFF." (48 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		39
NUMBER OF PERSONS WHO CAST BALLOTS	38	
NUMBER OF SPOILED BALLOTS	2	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	19	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	17	

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2306-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE LAMBTON COUNTY BOARD OF EDUCATION (RESPONDENT).

UNIT: "ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT AT LAMBTON COUNTY, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, TRANSPORTATION OFFICER, ASSISTANT TO THE CONTROLLER OF PLANT OPERATIONS, PLANNING OFFICER, ATTENDANCE COUNSELLORS, GUIDANCE COUNSELLORS, CONSULTANTS, PSYCHOLOGISTS, PSYCHOMETRISTS, SOCIAL WORKERS, CONSTRUCTION INSPECTOR, SENIOR BUYER, PERSONS EMPLOYED IN PERSONNEL SERVICES, PERSONS EMPLOYED UNDER A TEACHING CONTRACT, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND ON A CO-OPERATIVE TRAINING PROGRAMME AND PERSONS COVERED BY SUBSISTING COLLECTIVE AGREEMENTS BETWEEN THE LAMBTON COUNTY BOARD OF EDUCATION AND THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCALS 986 AND 1019." (235 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		83
NUMBER OF PERSONS WHO CAST BALLOTS	82	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	67	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	15	

2592-72-R: SERVICE EMPLOYEES UNION, LOCAL 204, AFFILIATED WITH THE S.E.I.U., A.F. OF L., C.L.C. (APPLICANT) V. THE WILLET HOSPITAL (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN PARIS, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (25 EMPLOYEES IN THE UNIT). (FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT THE TERM TECHNICAL PERSONNEL COMPRISES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTRO-ENCEPHALOGRAPHS, ELECTRICAL SHOCK THERAPISTS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS.).



NUMBER OF NAMES OF PERSONS ON VOTERS'	
LIST	28
NUMBER OF PERSONS WHO CAST BALLOTS	6
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	5
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	1

2779-72-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. BASIL (SIMCOE) LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES AND ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF PETERBOROUGH, VICTORIA AND THE PROVISIONAL COUNTY OF HALIBURTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS'	
LIST	4
NUMBER OF PERSONS WHO CAST BALLOTS	3
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	2
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	1

2791-72-R: NURSES' ASSOCIATION OXFORD HEALTH UNIT (APPLICANT) V. OXFORD HEALTH UNIT (RESPONDENT) V. EMPLOYEE (OBJECTOR).

UNIT #2: "ALL REGISTERED AND GRADUATE NURSES IN THE EMPLOY OF THE RESPONDENT REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR." (2 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS'	
LIST	2
NUMBER OF PERSONS WHO CAST BALLOTS	2
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	2
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	0

(BARGAINING UNIT #1 - SEE BARGAINING UNITS CERTIFIED - NO VOTE CONDUCTED).

2831-72-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. DOMINION CUTOUT LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (46 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		42
NUMBER OF PERSONS WHO CAST BALLOTS	40	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	25	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	15	

2871-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA  
(APPLICANT) V. F. A. TUCKER (ONTARIO) LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE  
RESPONDENT IN THE COUNTY OF WELLINGTON, SAVE AND EXCEPT NON-WORKING FORE-  
MEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN  
THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		2
NUMBER OF PERSONS WHO CAST BALLOTS	2	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	2	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	0	

2914-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. SCOTT'S  
NURSING HOME, LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT LINDSAY, WHO ARE REGULARLY  
EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DUR-  
ING THE SCHOOL VACATION PERIOD, SAVE AND EXCEPT GRADUATE NURSING STAFF,  
GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, NURSING  
SUPERVISOR, PERSONS ABOVE THE RANK OF NURSING SUPERVISOR AND OFFICE  
STAFF." (24 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		22
NUMBER OF PERSONS WHO CAST BALLOTS	12	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	11	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	1	

#### APPLICATIONS FOR CERTIFICATION DISMISSED DURING JANUARY

#### NO VOTE CONDUCTED

1296-71-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMEN-  
TAL IRONWORKERS, LOCAL 786 (APPLICANT) V. SENTINEL RELIANCE PRODUCTS  
LIMITED (RESPONDENT) V. ONTARIO ERECTORS ASSOCIATION (PARTY ADDED BY THE

BOARD) V. INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS (PARTY ADDED BY THE BOARD). (4 EMPLOYEES).

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2131-72-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) V. RCA LIMITED (RESPONDENT) V. RCA VICTOR EMPLOYEES' ASSOCIATION (INTERVENER).

UNIT: "ALL EMPLOYEES OF RCA LIMITED, AT ITS DISTRIBUTION AND SERVICE WAREHOUSE, METROPOLITAN TORONTO, ONTARIO, SAVE AND EXCEPT SUPERVISORS, ADMINISTRATORS, BRANCH CLERKS, PERSONS ABOVE THE RANK OF SUPERVISOR, ADMINISTRATOR AND BRANCH CLERK, SALESMEN, THE SECRETARY TO THE BRANCH MANAGER, ONE STENOGRAPHER TO THE MANAGER OF OPERATIONS AND THE MANAGER OF SALES, ONE STENOGRAPHER TO THE CREDIT MANAGER, ONE STENOGRAPHER TO THE TORONTO MANAGER OF BROADCAST AND INDUSTRIAL PRODUCTS MARKETING, ONE PERSON TO DO STENOGRAPHIC WORK FOR THE SERVICE MANAGER, ONE PERSON TO DO STENOGRAPHIC WORK FOR THE TECHNICAL PRODUCTS SERVICE MANAGER AND STUDENTS HIRED FOR THE SCHOOL VACATION PERIOD." (90 EMPLOYEES IN THE UNIT). (FOR THE REASONS GIVEN ORALLY AT THE HEARING THE BOARD FINDS THAT ALL THE DISTRIBUTION AND SERVICE WAREHOUSES IN METROPOLITAN TORONTO ARE INCLUDED IN THE AFORESAID BARGAINING UNIT.).

2730-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) V. DELPHIS COTE LIMITED (RESPONDENT) V. SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL #47 (INTERVENER). (12 EMPLOYEES).

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2743-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) V. JAMIE GENERAL CONTRACTORS (1971) LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (22 EMPLOYEES).

2796-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. D. R. CRAWFORD CONSTRUCTION COMPANY (RESPONDENT). (4 EMPLOYEES)

2797-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. WHITNEY MAINTENANCE LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (4 EMPLOYEES).

2826-72-R: TEAMSTERS INTERNATIONAL UNION LOCAL 990 AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. THUNDERBAY TRANSPORT (RESPONDENT). (10 EMPLOYEES)

2835-72-R: PIERRETTE CANADIAN (APPLICANT) V. THE HOTELS, CLUBS, RESTAURANTS, TAVERNS EMPLOYEES' UNION LOCAL 261, OTTAWA, ONTARIO, A.F.L. - C.I.O. - C.L.C. (RESPONDENT). (10 EMPLOYEES).

2862-72-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) V. R. RUESSE CONSTRUCTION CO. LIMITED (RESPONDENT). (9 EMPLOYEES).



2863-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. TERRAPIN BUILDING SYSTEMS (RESPONDENT). (5 EMPLOYEES).

2881-72-R: LUMBER AND SAWMILL WORKERS UNION LOCAL 2693 OF THE UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) V. AUSTIN LUMBER (DALTON) LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (6 EMPLOYEES).

2909-72-R: LABORERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL UNION No. 597 (APPLICANT) V. AARVI CONSTRUCTION COMPANY LIMITED (RESPONDENT). (14 EMPLOYEES).

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2981-72-R: OPERATIVE PLASTERERS' & CEMENT MASONS' INTERNATIONAL ASSOCIATION, LOCAL 48 (APPLICANT) V. GAZELLE WALL SYSTEMS LIMITED (RESPONDENT). (2 EMPLOYEES).

2999-72-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. MODERN BUILDING CLEANING DIVISION OF DUSTBANE ENTERPRISES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS BRANCH AT THE HEARST BOARD OF EDUCATION, AT HEARST, SAVE AND EXCEPT FOREMEN, THOSE ABOVE THE RANK OF FOREMAN AND PERSONS EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK." (2 EMPLOYEES IN THE UNIT).

3004-72-R: THE PROFESSIONAL INSTITUTE STAFF ASSOCIATION (APPLICANT) V. THE PROFESSIONAL INSTITUTE OF THE PUBLIC SERVICE OF CANADA (RESPONDENT). (38 EMPLOYEES).

3007-72-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL 880 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. STAR-KIST CARIBE INCORPORATED CANADA DIVISION (RESPONDENT) V. SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION (INTERVENER). (37 EMPLOYEES).

[1973] 2 OLRB M.R. - PAGE 21.

3015-72-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE KITCHENER WATER COMMISSION (RESPONDENT). (17 EMPLOYEES).

3108-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1089, 271 DEVINE STREET, SARNIA, ONTARIO (APPLICANT) V. REVDAL CONSTRUCTION LTD., 12 SHEPPARD STREET, TORONTO, ONTARIO (RESPONDENT). (4 EMPLOYEES).

#### CERTIFICATION DISMISSED SUBSEQUENT TO PRE-HEARING VOTE

2785-72-R: TORONTO TYPOGRAPHICAL UNION, LOCAL 91 (APPLICANT) V. RONALDS-FEDERATED LIMITED (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT RICHMOND HILL ENGAGED IN COMPOSING ROOM WORK, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE TORONTO PRINTING PRESSMEN AND ASSISTANTS' UNION No. 10 AND THE RESPONDENT AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (78 EMPLOYEES). (THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT "PROOF CHECKERS" AND "PROOF PULLERS" ARE NOT INCLUDED IN THE VOTING CONSTITUENCY.). (FOR PURPOSES OF CLARITY THE BOARD FURTHER NOTES THE AGREEMENT OF THE PARTIES THAT "PUNCH PAPER TAPE MACHINE OPERATORS" AND "EMPLOYEES ENGAGED IN PASTE MAKE-UP" AND "EMPLOYEES ENGAGED IN RUBBER PLATE MOULDING DEPARTMENT" ARE INCLUDED IN THE VOTING CONSTITUENCY.).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		77
NUMBER OF PERSONS WHO CAST BALLOTS		77
NUMBER OF SPOILED BALLOTS	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	23	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	53	

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2818-72-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. GENERAL SIGNAL APPLIANCES LIMITED (RESPONDENT).

VOTING CONSTITUENCY: "ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT AT WELLAND, SAVE AND EXCEPT FOREMEN, SUPERVISORS, PERSONS ABOVE THE RANKS OF FOREMAN AND SUPERVISOR, PROFESSIONAL ENGINEERS, PLANT NURSE, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD OR ON A CO-OPERATIVE TRAINING BASIS, PAYMISTRESS, EMPLOYEE RELATIONS DEPARTMENT EMPLOYEES, ONE SECRETARY TO EACH OF THE FOLLOWING: PRESIDENT, VICE-PRESIDENT OF FINANCE, VICE-PRESIDENT OF MARKETING, VICE-PRESIDENT OF OPERATIONS, PRODUCTION MANAGER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND EMPLOYEES COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE UNITED STEELWORKERS OF AMERICA." (42 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		39
NUMBER OF PERSONS WHO CAST BALLOTS		39
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	11	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	28	

2941-72-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. HEIDT METAL PRODUCTS LIMITED (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT WATERLOO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (25 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		21
NUMBER OF PERSONS WHO CAST BALLOTS	16	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	4	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	12	

3041-72-R: UNITED PAPERWORKERS INTERNATIONAL UNION (APPLICANT) V. MORGAN ADHESIVES OF CANADA LIMITED (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT BRAMPTON, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, AND OFFICE AND SALES STAFF." (109 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		108
NUMBER OF PERSONS WHO CAST BALLOTS	103	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	23	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	80	

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

2043-72-R: INTERNATIONAL LEATHER GOODS, PLASTICS & NOVELTY WORKERS' UNION, LOCAL 8 (APPLICANT) V. GIFTSON SALES (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN OFFICE AND SALES STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (10 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		8
NUMBER OF PERSONS WHO CAST BALLOTS	8	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	3	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	5	



2429-72-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION No. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. NOBLEWOOD TRANSPORT LIMITED (RESPONDENT) V. EMPLOYEE (OBJECTOR).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT OR WORKING OUT OF BURGESSVILLE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, DRIVER SUPERVISOR, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (30 EMPLOYEES IN THE UNIT). (THE BOARD FURTHER STATED IN ITS DECISION DATED SEPTEMBER 8TH, 1972: "HAVING REGARD TO THE AGREEMENT OF THE PARTIES AND FOR THE PURPOSES OF CLARITY, THE BOARD DECLARES THAT THE EMPLOYEES OF THE RESPONDENT EMPLOYED AT BRODHAGEN AND PARKHILL, PRESENTLY REPRESENTED BY BRANTOX DRIVERS' ASSOCIATION, ARE NOT INCLUDED IN THE BARGAINING UNIT.").

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	22
NUMBER OF PERSONS WHO CAST BALLOTS	21
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	6
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF BRANTOX DRIVERS' ASSOCIATION	15

2501-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. CAMPBELLFORD MEMORIAL HOSPITAL (RESPONDENT) V. ONTARIO BRANCH, CANADIAN PHYSIOTHERAPY ASSOCIATION (INTERVENER) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT #1: "ALL EMPLOYEES OF THE RESPONDENT AT CAMPBELLFORD, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENTS DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, CHIEF ENGINEER, OFFICE AND CLERICAL STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIODS." (43 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	58
NUMBER OF PERSONS WHO CAST BALLOTS	52
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	25
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	27

UNIT #2: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT CAMPBELLFORD SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, ONE SECRETARY TO THE ADMINISTRATOR, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIODS." (22 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS'		
LIST		9
NUMBER OF PERSONS WHO CAST BALLOTS	9	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	1	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	8	

(BARGAINING UNIT #3 - SEE BARGAINING UNITS - NO VOTE CONDUCTED).

2558-72-R: THE INTERNATIONAL UNION OF ELECTRICAL, RADIO & MACHINE WORKERS, AFL, CIO, CLC (APPLICANT) V. THE HOLOPHANE COMPANY, LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF CHINGUACOUSY, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (16 EMPLOYEES IN THE UNIT). (THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE MARKETING MANAGER, THE PURCHASING OFFICER, THE CHIEF ENGINEER, AND THE PRODUCTION CONTROL SALES MANAGER EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND ARE NOT INCLUDED IN THE BARGAINING UNIT.). (THE BOARD FURTHER NOTES THE AGREEMENT OF THE PARTIES THAT THE PRIVATE SECRETARY TO THE PRESIDENT IS NOT INCLUDED IN THE BARGAINING UNIT AND THAT G. ELLIS EXERCISES MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND IS NOT INCLUDED IN THE BARGAINING UNIT.).

NUMBER OF NAMES OF PERSONS ON VOTERS'		
LIST		24
NUMBER OF PERSONS WHO CAST BALLOTS	24	
BALLOTS SEGREGATED AND NOT COUNTED	2	
NUMBER OF SPOILED BALLOTS	2	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	10	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	10	

2630-72-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. THE HOBART MFG. CO. LTD. (RESPONDENT).

UNIT: "ALL OFFICE AND SALES STAFF OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT BRANCH MANAGER AND PERSONS ABOVE THE RANK OF BRANCH MANAGER." (5 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS'		
LIST		2
NUMBER OF PERSONS WHO CAST BALLOTS	2	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	0	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	2	

2652-72-R: LUMBER AND SAWMILL WORKERS UNION, LOCAL 2693, OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. WESMAK LUMBER COMPANY LIMITED, ISLAND LAKE DIVISION (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS SAWMILL PLANING MILL AND YARD IN THE TOWNSHIP OF 136 IN THE DISTRICT OF SUDBURY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, SCALERS, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (50 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	38
NUMBER OF PERSONS WHO CAST BALLOTS	37
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	11
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	26

2680-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE UNITED COUNTIES OF STORMONT, DUNDAS AND GLENGARRY (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS GLEN-STOR-DUN LODGE AT CORNWALL, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, REGISTERED NURSES, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (74 EMPLOYEES IN THE UNIT). (THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE TEN PERSONS CLASSIFIED AS CHARGE NURSE'S AIDES, INCLUDING CHARGE NURSING ATTENDANT, ARE INCLUDED IN THE BARGAINING UNIT.).

NUMBER OF NAMES OF PERSONS ON VOTERS'	
LIST	69
NUMBER OF PERSONS WHO CAST BALLOTS	65
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	32
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	33

2878-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. BESTVIEW HOLDINGS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN ITS METRO LODGE NURSING HOME AT ST. CATHARINES, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, TECHNICAL PERSONNEL AND OFFICE STAFF." (83 EMPLOYEES IN THE UNIT).



NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		75
NUMBER OF PERSONS WHO CAST BALLOTS	63	
BALLOTS SEGREGATED AND NOT COUNTED	2	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	26	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	35	

#### APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING JANUARY

3016-72-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL 880  
AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,  
WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. SASSO DISPOSAL LIMITED  
(RESPONDENT). (6 EMPLOYEES).

3018-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA  
LOCAL UNION 93 (APPLICANT) V. A. E. RULE (1965) LIMITED (RESPONDENT).  
(2 EMPLOYEES).

3148-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA  
(APPLICANT) V. CLOVERLAWN INVESTMENTS LTD. (RESPONDENT). (6 EMPLOYEES).

#### APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED OF DURING JANUARY

2659-72-R: JOHN GAUCHER (APPLICANT) V. LOCAL No. 9 OF THE INTERNATIONAL  
LEATHER GOODS, PLASTICS AND NOVELTY WORKERS' UNION (RESPONDENT) V. COLUM-  
BIA FINISHING MILLS LIMITED (INTERVENER). (GRANTED).

UNIT: "ALL EMPLOYEES OF COLUMBIA FINISHING MILLS LIMITED AT ITS CORNWALL  
PLANT IN THE CLASSIFICATIONS OF HELPERS AND LABOUR; MACHINE OPERATOR;  
MULTIPLE MACHINE OPERATOR "B"; MULTIPLE MACHINE OPERATOR "A"; MAINTENANCE  
AND COLOR MATCHER; TENTER OPERATOR; COATER OPERATOR; BACKFILLER OPERATOR;  
GRADER; DYE JIGG OPERATOR; MIX & GRIND OPERATOR; POLAR OPERATOR; BECK  
OPERATOR; CALENDER-EMBOSSER OPERATOR; RE-ROLL OPERATOR; LAMINATOR OPER-  
ATOR, SAVE AND EXCEPT EXECUTIVE, ADMINISTRATIVE, AND OTHER SALARIED EM-  
PLOYEES, DEPARTMENT CLERKS AND OFFICE EMPLOYEES, MANAGERS, SUPERINTENDENTS,  
SUPERVISORS, FOREMEN, FORELADIES, PLANT PROTECTION EMPLOYEES, ALL EMPLOYEES  
HAVING THE RIGHT TO HIRE, PROMOTE, DISCIPLINE, DISCHARGE OR OTHERWISE EFFECT  
CHANGES IN THE STATUS OF EMPLOYEES OR EFFECTIVELY TO RECOMMEND SUCH ACTION,  
ALL REPRESENTATIVES OF THE EMPLOYER IN ITS RELATIONS WITH THE UNION AND  
EMPLOYEES." (18 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		18
NUMBER OF PERSONS WHO CAST BALLOTS	18	
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	0	
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	18	

2838-72-R: EVELYN ADAMYK, MURIEL LINDQUIST, OLIVE PROSS, DOUGLAS McMILLAN, BRIAN KOTCHON, MARGARET M. SIDEEN, GARNET WILSON AND LARRY TURNER (APPLICANTS) V. RETAIL STORE EMPLOYEES UNION LOCAL No. 832 (RESPONDENT). (11 EMPLOYEES). (GRANTED).

2994-72-R: HOWARD AVERY CONSTRUCTION LIMITED (APPLICANT) V. THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA - LOCAL UNION No. 446 (RESPONDENT). (350 EMPLOYEES). (DISMISSED).

3032-72-R: GEORGETTE ROBICHAUD (APPLICANT) V. LOCAL 197 OF THE HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION, A.F.L. C.I.O. C.L.C. (RESPONDENT). (6 EMPLOYEES). (DISMISSED).

#### APPLICATIONS FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF DURING

##### JANUARY

2706-72-R: GRAPHIC ARTS INTERNATIONAL UNION, LOCAL 12-L (APPLICANT) V. LITHOGRAPHERS AND PHOTOENGRAVERS INTERNATIONAL UNION LOCAL 12-L (RESPONDENT). (GRANTED).

2811-72-R: GRAPHIC ARTS INTERNATIONAL UNION, LOCAL 242 (APPLICANT) V. LITHOGRAPHERS AND PHOTOENGRAVERS INTERNATIONAL UNION, LOCAL 242 (RESPONDENT). (GRANTED).

#### APPLICATION FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING

##### JANUARY

3009-72-R: LIQUID CARBONIC CANADA LIMITED (APPLICANT) V. C. ARSENAULT ET AL (RESPONDENTS). (WITHDRAWN).

#### APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING JANUARY

2447-72-U: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. GAYUGA MATERIALS & CONSTRUCTION CO. LIMITED, EUGENE MONTAGUE AND THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (RESPONDENTS). (GRANTED).

2846-72-U: ALLAN G. COOK LIMITED (APPLICANT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 793 (RESPONDENT). (WITHDRAWN).

2847-72-U: ALLAN G. COOK LIMITED (APPLICANT) V. SAM SOUCY (RESPONDENT). (WITHDRAWN).

2919-72-U: PAUL DAoust CONSTRUCTION LTD. (APPLICANT) V. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL 2466 (RESPONDENT). (WITHDRAWN).

3027-72-U: GARTSHORE CONSTRUCTION COMPANY LIMITED (APPLICANT) V. THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION No. 446 (RESPONDENT). (GRANTED).

3070-72-U: INTERNATIONAL CHEMICAL WORKERS' UNION, LOCAL 159 (APPLICANT) V. KODAK CANADA LTD., D. BURGESS, L. JOYNT, J. HILL, A. BOLTE, AND D. MIEKLE (RESPONDENTS). (WITHDRAWN).

COMPLAINTS UNDER SECTION 79 (UNFAIR LABOUR PRACTICE) DISPOSED OF DURING

JANUARY

1505-71-U: INTERNATIONAL WOODWORKERS OF AMERICA (COMPLAINANT) V. J. E. MARTEL & SONS LUMBER LTD. (RESPONDENT). (WITHDRAWN).

2073-72-U: ALMA LAURA GORDON (COMPLAINANT) V. AUTY PRINTING LIMITED AND PRINTING SPECIALTIES AND PAPER PRODUCTS UNION LOCAL 466 (RESPONDENTS). (DISMISSED).

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2294-72-U: INTERNATIONAL BROTHERHOOD OF BOOK BINDERS AND BINDERY WOMEN, LOCAL No. 226 (COMPLAINANT) V. LONDON PRINTING & LITHOGRAPHING CO. LIMITED (RESPONDENT). (DISMISSED).

2495-72-U: INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 793 (COMPLAINANT) V. CAYUGA MATERIALS & CONSTRUCTION CO. LIMITED (RESPONDENT). (WITHDRAWN).

2662-72-U: CANADIAN UNION OF GENERAL EMPLOYEES (COMPLAINANT) V. THE TORONTO WESTERN HOSPITAL (RESPONDENT). (DISMISSED).

2672-72-U: CANADIAN UNION OF GENERAL EMPLOYEES (COMPLAINANT) V. THE TORONTO WESTERN HOSPITAL (RESPONDENT). (DISMISSED).

2733-72-U: MANUEL CAMARA (COMPLAINANT) V. F. G. BRADLEY CO. LTD. (RESPONDENT). (DISMISSED).

2805-72-U: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS LOCAL UNION 419 (COMPLAINANT) V. REDFERN AUTOMOTIVE SUPPLY LIMITED (RESPONDENT). (GRANTED).

2839-72-U: TEAMSTERS LOCAL UNION 879 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (COMPLAINANT) V. CAYUGA MATERIALS & CONSTRUCTION CO. LIMITED (RESPONDENT). (DISMISSED).

2883-72-U: ARTHUR J. FERJO (COMPLAINANT) V. INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 894 AND DON E. LOUNDS (RESPONDENTS). (DISMISSED).



3024-72-U: JOHN TURNER (COMPLAINANT) V. WILLIAM MORRIS (RESPONDENT).  
(WITHDRAWN).

3034-72-U: EVANGELOS TZAGADOURIS (COMPLAINANT) V. TORONTO TRANSIT COM-  
MISSION, PLANT DIVISION (RESPONDENT). (WITHDRAWN).

3056-72-U: CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) V. BESTVIEW  
HOLDINGS LIMITED (RESPONDENT). (WITHDRAWN).

3112-72-U: CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) V. PROVI-  
DENCE VILLA & HOSPITAL (RESPONDENT). (WITHDRAWN).

APPLICATION UNDER SECTION 55 DISPOSED OF DURING JANUARY

2822-72-R: RETAIL CLERKS UNION, LOCAL 206, CHARTERED BY THE RETAIL  
CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. LOBLAW GROCETERIAS CO.  
LIMITED (RESPONDENT) V. UNION OF CANADIAN RETAIL EMPLOYEES, C.L.C.  
(INTERVENER). (GRANTED).

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2111-72-M: J. W. LAFERRIERE (COMPLAINANT) V. LOCAL 1408 U.A.W. (RE-  
SPONDENT). (DISMISSED).

APPLICATIONS FOR DETERMINATION UNDER SECTION 95(2) DISPOSED OF DURING

JANUARY

1629-71-M: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. LIVING-  
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2452-72-M: CITY OF STRATFORD (APPLICANT) V. CANADIAN UNION OF PUBLIC  
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2747-72-M: SEVEN UP (ONTARIO) LIMITED (EMPLOYER) V. INTERNATIONAL UNION  
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2010-72-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL UNION No. 91 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. COMPAGNIE MIRON LTEE (RESPONDENT) V. UNITED CEMENT, LIME & GYPSUM WORKERS INTERNATIONAL UNION LOCAL 384 (INTERVENER). (REQUEST DENIED).

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2234-72-R: SHEET METAL WORKERS INTERNATIONAL ASSOCIATION LOCAL UNION #285 (APPLICANT) V. APPLEWOOD AIR-CONDITIONING LIMITED (RESPONDENT). (REQUEST DENIED).

2786-72-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. MARSLAND ENGINEERING LIMITED (RESPONDENT). (REQUEST DENIED).

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2178-72-U: THE HOTELS, CLUBS, RESTAURANTS, TAVERNS EMPLOYEES UNION, LOCAL 261, A.F.L.-C.I.O.-C.L.C., 1091 WELLINGTON STREET, OTTAWA, ONTARIO (COMPLAINANT) V. THE ALEXANDRA HOTEL, 352 BANK STREET, OTTAWA, ONTARIO (RESPONDENT). (REQUEST DENIED).





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ONTARIO

# *Monthly Report*

ONTARIO LABOUR RELATIONS BOARD



ONTARIO LABOUR RELATIONS BOARD REPORTS

A MONTHLY SERIES OF DECISIONS FROM THE

ONTARIO LABOUR RELATIONS BOARD

CITED [1973] OLRB REP.



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- AND -

2358-72-R: TEAMSTERS LOCAL UNION 879 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. C. F. ANDERSON CONCRETE PRODUCTS LIMITED (RESPONDENT) V. CHRISTIAN LABOUR ASSOCIATION OF CANADA (INTERVENER) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: D. E. FRANKS, VICE-CHAIRMAN, AND BOARD MEMBERS H.J.F. ADE AND E. BOYER.

APPEARANCES AT THE HEARING: L. A. MACLEAN AND DON SWAIT FOR THE APPLICANT; D. L. BRISBIN FOR THE RESPONDENT; T. J. DUNNE AND EDWARD VANDERKLOET FOR THE INTERVENER; NO ONE APPEARING FOR THE GROUP OF EMPLOYEES.

DECISION OF THE BOARD:

FEBRUARY 1, 1973.

1. ON JULY 18, 1972, THE TEAMSTERS LOCAL UNION 879 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (HEREINAFTER REFERRED TO AS THE "TEAMSTERS") APPLIED FOR CERTIFICATION FOR THE EMPLOYEES OF THE RESPONDENT AT SIMCOE; BOARD FILE NO. 2304-72-R. THE TERMINAL DATE FIXED FOR THAT APPLICATION WAS JULY 27, 1972. ON JULY 27, 1972, THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (HEREINAFTER REFERRED TO AS THE "CLAC") APPLIED FOR CERTIFICATION FOR THE SAME GROUP OF EMPLOYEES AND SUBMITTED EVIDENCE OF MEMBERSHIP WITH ITS APPLICATION; BOARD FILE NO. 2358-72-R. PURSUANT TO SECTION 92(3) OF THE ACT, THE BOARD PROPOSES TO TREAT THE SUBSEQUENT APPLICATION BY THE CLAC AS HAVING BEEN MADE ON THE DATE OF THE MAKING OF THE ORIGINAL APPLICATION IN THIS MATTER BY THE TEAMSTERS. THE APPLICATIONS IN BOARD FILE NO. 2304-72-R AND BOARD FILE NO. 2358-72-R ARE HEREBY CONSOLIDATED INTO ONE APPLICATION WITH THE TEAMSTERS AS AN APPLICANT AND THE CLAC AS AN INTERVENER APPLYING FOR CERTIFICATION. THE NAME OF THE RESPONDENT IS AMENDED TO READ: C. F. ANDERSON CONCRETE PRODUCTS LIMITED. WITH RESPECT TO BOARD FILE NO. 2304-72-R, STATEMENTS OF DESIRE WERE RECEIVED FROM A GROUP OF EMPLOYEES. HOWEVER, SINCE NO ONE APPEARED AT THE HEARING IN THIS MATTER ON BEHALF OF THE GROUP OF OBJECTING EMPLOYEES WE DO NOT PROPOSE TO GIVE ANY WEIGHT TO THE STATEMENTS OF DESIRE FILED IN THIS MATTER.

2. THIS CONSOLIDATED APPLICATION IS ONE OF A GROUP OF CASES INVOLVING A NUMBER OF COMPANIES WHICH HAVE BEEN VIEWED BY THE APPLICANT AND THE INTERVENER AS IN SOME WAY INTERRELATED. IN RESPECT OF THIS GROUP OF CASES THE APPLICANT AND ANOTHER TRADE UNION, NOT A PARTY TO THIS PARTICULAR CASE, MADE CERTAIN ALLEGATIONS OF IMPROPRIETY (NON-PAY) WITH RESPECT TO THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE INTERVENER. THE EMPLOYEES WITH RESPECT TO WHOM THESE ALLEGATIONS OF NON-PAY WERE MADE APPEARED ON A

LIST OF EMPLOYEES IN ONE OF THE CASES IN THE GROUP OF CASES REFERRED TO ABOVE, RELATING TO CAYUGA MATERIALS & CONSTRUCTION CO. LIMITED AT CAYUGA (BOARD FILE NO. 2361-72-R). AS A RESULT OF THE BOARD'S USUAL INVESTIGATION IN SUCH MATTERS THE BOARD CONDUCTED AN EXTENSIVE INQUIRY BY MEANS OF A HEARING CONCERNING THE ALLEGATIONS OF NON-PAY. HOWEVER, SINCE THE EMPLOYEES WHOSE EVIDENCE OF MEMBERSHIP WAS IN QUESTION WERE ONLY EMPLOYED BY THE ONE EMPLOYER AND FURTHER SINCE THE CARDS WERE ONLY SUBMITTED IN RELATION TO THAT ONE APPLICATION BY THE CLAC, THE BOARD'S INQUIRY WAS CONDUCTED ONLY WITH RESPECT TO THE ONE CASE, NOTWITHSTANDING THAT THE GROUP OF CASES HAD BEEN LISTED FOR HEARING AT THE SAME TIME AS THE BOARD'S HEARINGS INTO THE ALLEGATIONS OF NON-PAY IN BOARD FILE NO. 2361-72-R. THUS, APART FROM THE INITIAL HEARING IN WHICH ALL THE CASES IN THE GROUP OF CASES WERE DEALT WITH, AND A FURTHER HEARING IN WHICH THE CHARGES FILED IN THESE CASES WERE HELD TO BE TIMELY, THE BOARD HAS CONDUCTED NO OTHER HEARINGS IN ANY OF THE CASES EXCEPT BOARD FILE NO. 2361-72-R.

3. THE BOARD'S INQUIRY INTO THE ALLEGATIONS OF NON-PAY WAS AN EXTENSIVE AND COMPLICATED INQUIRY AND WILL BE DEALT WITH BY A DECISION IN THAT CASE. HOWEVER, IN THE COURSE OF ARGUMENT IN THAT CASE, COUNSEL FOR THE APPLICANT IN THIS CASE SUBMITTED THAT THE CAMPAIGN BY THE INTERVENER WAS ALL ONE CAMPAIGN WITH RESPECT TO THE VARIOUS RELATED EMPLOYERS FORMING THE GROUP OF CASES. INDEED, MR. VANDERKLOET IN GIVING EVIDENCE ON BEHALF OF THE INTERVENER, CLAC, IN THAT MATTER ACKNOWLEDGED THAT THE UNION'S CAMPAIGN WITH RESPECT TO THE VARIOUS EMPLOYERS CONCERNED WAS ALL CONDUCTED AT ONE TIME. COUNSEL FOR THE TEAMSTERS, HOWEVER, CONTENDED THAT AS A RESULT OF CERTAIN DEFICIENCIES IN THE CONDUCT OF THIS SINGLE CAMPAIGN BY THE CLAC, THAT ALL THE APPLICATIONS BY THE CLAC IN THIS GROUP OF CASES SHOULD BE DISMISSED. COUNSEL FOR THE CLAC, HOWEVER, SUBMITS THAT THE EVIDENCE ADDUCED WAS ONLY IN RELATION TO THE ONE APPLICATION AND HE WOULD NOT AGREE THAT THE EVIDENCE OF THAT CASE SHOULD BE APPLIED IN THE INSTANT CASE.

4. AN EXAMINATION OF THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE CLAC IN THE PRESENT APPLICATION FOR CERTIFICATION REVEALS THAT NONE OF THE ALLEGATIONS WITH RESPECT TO NON-PAY WHICH HAVE BEEN MADE BY THE TEAMSTERS RELATE TO ANY EMPLOYEES OF C. F. ANDERSON CONCRETE PRODUCTS LIMITED, THE RESPONDENT IN THIS CASE, OR ANY OF THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE CLAC IN RESPECT OF ITS APPLICATION FOR CERTIFICATION OF THE EMPLOYEES OF C. F. ANDERSON CONCRETE PRODUCTS LIMITED. FURTHER EXAMINATION OF THE EVIDENCE OF MEMBERSHIP SUBMITTED INDICATES THAT THE \$1.00 PAID IN RESPECT OF MEMBERSHIP TO THE CLAC WAS COLLECTED BY ONLY TWO COLLECTORS. THESE COLLECTORS ARE OFFICERS OF THE CLAC AND NEITHER HAVE BEEN REFERRED TO IN ANY OF THE EVIDENCE IN BOARD FILE NO. 2361-72-R, THAT IS, THE CASE IN WHICH THE BOARD CONDUCTED THE INQUIRY INTO THE ALLEGATIONS OF NON-PAY, AS A PARTY TO A QUESTIONABLE ACTIVITY WITH RESPECT TO THE EVIDENCE OF MEMBERSHIP ON WHICH THEY APPEAR AS COLLECTORS.

5. COUNSEL FOR THE APPLICANT, TEAMSTERS, ARGUED THAT IN ANOTHER CASE BEFORE THIS BOARD, PEARL LAUNDRY, AUGUST 1968 OLRB MTHLY. REP. 450, THE BOARD HAS APPLIED EVIDENCE OF A DEFECT IN A SINGLE MEMBERSHIP CAM-



PAIGN TO THE EVIDENCE OF MEMBERSHIP SUBMITTED IN MORE THAN ONE APPLICATION. COUNSEL SUBMITS THAT HAVING REGARD TO THE FACT THAT THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE CLAC WAS OBTAINED IN THE COURSE OF ONE CAMPAIGN THAT IF THE BOARD FINDS A DEFECT IN THAT CAMPAIGN THE EVIDENCE OF MEMBERSHIP SUBMITTED IN THIS APPLICATION SHOULD NOT BE GIVEN ANY EFFECT.

6. ALTHOUGH WE HAVE GRAVE DOUBTS CONCERNING THE PROPRIETY OF THE SUGGESTION BY COUNSEL FOR THE TEAMSTERS THAT THE EVIDENCE IN ONE CASE SHOULD BE APPLIED IN ANOTHER CASE, IN THE ABSENCE OF THE AGREEMENT OF THE PARTIES AND PARTICULARLY IN THE LIGHT OF THE DECISION OF THE HIGH COURT IN REG. V. OLRB, EX PARTE TRENTON CONSTRUCTION WORKERS ASSOCIATION LOC. 52 (1963) 39 D.L.R. (2d) 593, IT IS NOT NECESSARY FOR US TO DEAL DIRECTLY WITH THAT PROPOSAL. EVEN IF THE BOARD WERE TO APPLY THE EVIDENCE ADDUCED IN THE INQUIRY INTO THE ALLEGATIONS OF NON-PAY CONDUCTED BY THE BOARD IN BOARD FILE NO. 2361-72-R, WE ARE NOT SATISFIED THAT A DEFECT FATAL TO THE EVIDENCE OF MEMBERSHIP PRESENTED BY THE CLAC IN THIS CASE HAS BEEN DISCLOSED IN THE COURSE OF THE BOARD'S INQUIRY IN BOARD FILE NO. 2361-72-R. THE EVIDENCE OF MEMBERSHIP SUBMITTED WITH RESPECT TO THE PRESENT CASE BY THE CLAC WAS NOT SUBMITTED IN RESPECT OF ANY OTHER APPLICATION BY THE CLAC, AND THE EVIDENCE IN RELATION TO THE ALLEGATIONS OF NON-PAY HAVE NOT TOUCHED UPON ANY OF THE MEMBERSHIP CARDS THUS SUBMITTED OR UPON THE CONDUCT OF THE COLLECTORS INDICATED ON THOSE CARDS IN THIS CASE.

7. IN VIEW OF THE ABOVE CONSIDERATIONS THE BOARD WILL PROCEED TO CONSIDER THE CHARGES MADE BY THE APPLICANT WHICH HAVE NOT BEEN HEARD BY THE BOARD.

8. THE REGISTRAR IS DIRECTED TO LIST THIS MATTER FOR HEARING.

2370-72-JD: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 837 (COMPLAINANT) V. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 38 AND C. A. PITTS ENGINEERING CONSTRUCTION LIMITED (RESPONDENTS).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND H.J.F. ADE.

APPEARANCES AT THE HEARING: RAYMOND KOSKIE AND H. MANCINELLI FOR THE COMPLAINANT; L. MCLEAN AND W. HAGUE FOR UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL UNION 38; JOHN P. SANDERSON AND DENNIS FLYNN FOR C.A. PITTS ENGINEERING CONSTRUCTION LIMITED.

DECISION OF THE BOARD: FEBRUARY 5, 1973.

1. IN THIS CASE THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 38 (HEREINAFTER REFERRED TO AS THE "CARPENTERS") OBJECTED TO THE JURISDICTION OF THE BOARD. HAVING CONSIDERED THE SUBMIS-

SIONS OF THE PARTIES THE BOARD IS OF THE OPINION THAT THE PRELIMINARY FACTS OUTLINED BY THE PARTIES WOULD INDICATE THAT THIS IS A JURISDICTIONAL DISPUTE OR WORK ASSIGNMENT SITUATION THAT CLEARLY FALLS WITHIN THE FRAMEWORK OF SECTION 81 OF THE LABOUR RELATIONS ACT, AND ACCORDINGLY WE FIND THAT WE HAVE JURISDICTION TO ENTERTAIN THE MERITS OF THIS CASE.

2. THE SECOND MATTER RAISED BY THE CARPENTERS WAS THAT THE BOARD SHOULD EXERCISE ITS DISCRETION AND REFUSE TO HEAR THE CASE ON THE MERITS, AND ITS PRIMARY GROUND FOR HAVING THE BOARD REFUSE TO HEAR THE MATTER WAS THAT IT WAS PROCEEDING TO ARBITRATION.

3. OF PRIME CONCERN IN THE AREA OF JURISDICTIONAL DISPUTES ARE THE PROCEDURAL LIMITATIONS THAT EXIST IN OTHER FORUMS APART FROM THIS BOARD. IN BOTH THE ARBITRATION PROCESS AND THE COURT PROCEDURE ALL THE PARTIES THAT ARE NECESSARY TO THE DISPUTE MAY NOT BE PROPERLY BEFORE THOSE TRIBUNALS. THE LABOUR RELATIONS ACT GENERALLY PERMITS ALL PARTIES WHO HAVE AN INTEREST OR WHO MAY BE AFFECTED BY A JURISDICTIONAL DISPUTE TO BE BROUGHT BEFORE THE LABOUR RELATIONS BOARD SO THAT A BINDING DETERMINATION MAY BE MADE. IT IS FOR THESE REASONS THAT WE THINK THAT THIS BOARD IS THE MOST SATISFACTORY FORUM FOR RESOLVING JURISDICTIONAL DISPUTES.

4. IF WE WERE TO REFUSE JURISDICTION AND PERMIT THE ARBITRATION TRIBUNAL TO DECIDE THE ISSUE AS WAS SUGGESTED BY COUNSEL FOR THE CARPENTERS, WE WOULD RUN THE RISK THAT A BOARD OF ARBITRATION WOULD NOT DECIDE THE MATTER BECAUSE IT WAS NOT A TRUE GRIEVANCE. IN OMEGA MARBLE CO. LTD. 22 L.A.C. 221 A BOARD OF ARBITRATION IN A VERY CAREFULLY REASONED DECISION DECLINED TO DEAL WITH A JURISDICTIONAL DISPUTE WITH ONE OF THE MAIN GROUNDS BEING THAT THE ONTARIO LABOUR RELATIONS BOARD WAS THE APPROPRIATE FORUM TO DEAL WITH THE MATTER. WE DO NOT THINK THAT THE PARTIES SHOULD BE PLACED IN A POSITION WHERE THEY MAY BE BOUNCED BACK AND FORTH BETWEEN THIS BOARD AND AN ARBITRATION TRIBUNAL AND THE COURTS, AND IN THE INTEREST OF SOUND LABOUR RELATIONS WE THINK THAT THIS BOARD SHOULD TAKE JURISDICTION, NOTWITHSTANDING THAT THE MATTER MAY BE PROCEEDING TO ARBITRATION. ACCORDINGLY WE ARE NOT PREPARED TO EXERCISE OUR DISCRETION AND REFUSE TO HEAR THE COMPLAINT. THE REGISTRAR IS DIRECTED TO LIST THIS MATTER FOR HEARING.

2978-72-R: BAKERY & CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA, LOCAL 264 (APPLICANT) v. LAURA SECORD LIMITED (RESPONDENT).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS H.J.F. ADE AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: L. A. MACLEAN, I. DAWSON AND M. ZIMMERMAN FOR THE APPLICANT; J. P. SANDERSON AND A. TELFER FOR THE RESPONDENT.

DECISION OF VICE-CHAIRMAN FRANK V. BOSCARIOL AND BOARD MEMBER H.J.F. ADE:  
FEBRUARY 5, 1973.

...

4. HAVING REGARD TO THE EVIDENCE AS ADDUCED AT THE CONTINUATION OF HEARING OF THIS MATTER ON FEBRUARY 1, 1973, WE ARE SATISFIED THAT ASSUNTA MANNA DID NOT SIGN THE MEMBERSHIP CARD SUBMITTED BY THE APPLICANT ON HER BEHALF AS PART OF ITS EVIDENCE OF MEMBERSHIP. THE EVIDENCE FAILS TO REVEAL, HOWEVER, WHO IN FACT WROTE HER NAME ON THE RELEVANT PORTIONS OF THE MEMBERSHIP CARD. THERE CAN BE NO QUESTION, THEREFORE, THAT IN THESE CIRCUMSTANCES, THE MEMBERSHIP CARD MUST BE DISCOUNTED.

5. TAKING INTO ACCOUNT THE TOTALITY OF THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES THERETO, WE ARE OF THE OPINION THAT, PURSUANT TO THE PROVISIONS OF SECTION 7(2) OF THE LABOUR RELATIONS ACT, THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE BE SOUGHT, HAVING REGARD TO ALL OF THE CIRCUMSTANCES IN THIS MATTER.

6. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN THIRTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON DECEMBER 19, 1972, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

7. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

8. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BE REPRESENTED BY THE APPLICANT IN THEIR EMPLOYMENT RELATIONS WITH THE RESPONDENT.

9. THE MATTER IS REFERRED TO THE REGISTRAR.

DECISION OF BOARD MEMBER P. J. O'KEEFFE: FEBRUARY 5, 1973.

HAVING CAREFULLY REVIEWED ALL OF THE EVIDENCE IN THIS MATTER I WOULD HAVE DIRECTED THAT THE APPLICANT BE CERTIFIED OUTRIGHT WITHOUT THE TAKING OF A REPRESENTATION VOTE.

3059-72-R: THE PROFESSIONAL EMBALMERS' ASSOCIATION OF ONTARIO (APPLICANT) V. KELLY FUNERAL HOMES LIMITED (RESPONDENT) V. EMPLOYEE (OBJECTOR).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS P. J. O'KEEFFE AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: J. A. RYDER AND D. ELVER FOR THE APPLICANT; G. A. PHILLIPS, Q.C., FOR THE RESPONDENT; BRIAN R. TAYLOR AND W. THOMAS ARNOLD FOR THE OBJECTOR.



DECISION OF J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBER J.E.C.  
ROBINSON, Q.C.: FEBRUARY 7, 1973.

1. THIS IS AN APPLICATION FOR CERTIFICATION IN WHICH THE APPLICANT ADDUCED EVIDENCE IN AN ATTEMPT TO ESTABLISH THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.

2. THE EVIDENCE ESTABLISHED THAT MR. DONALD ELVER WAS ONE OF THE PRIME MOVERS IN THE FORMATION OF THE APPLICANT AND INDEED WAS ELECTED AS THE APPLICANT'S FIRST PRESIDENT. AT THE TIME THE APPLICANT WAS FORMED MR. ELVER WAS, AND CONTINUES TO BE, THE FUNERAL DIRECTOR OF THE COLLEGE MEMORIAL FUNERAL CHAPEL IN TORONTO. WHILE THERE ARE NO LICENSED EMBALMERS EMPLOYED AT THE COLLEGE MEMORIAL FUNERAL CHAPEL, THERE ARE TWO OTHER EMPLOYEES WORKING UNDER THE JURISDICTION OF MR. ELVER WHO, OF COURSE, IS SUBJECT TO THE AUTHORITY OF THE CORPORATION THAT OWNS THE COLLEGE MEMORIAL FUNERAL CHAPEL. MR. ELVER TESTIFIED THAT HE NEGOTIATES THE PRICE OF FUNERALS WITH THE RELATIVES OF THE DECEASED AND MAKES ALL OTHER ARRANGEMENTS WITH RESPECT TO THE FUNERALS AND GENERALLY PERFORMS THE STATUTORY FUNCTIONS AS SET OUT IN SECTION 21 OF THE EMBALMERS AND FUNERAL DIRECTORS ACT R.S.O. 1970, CHAPTER 144.

3. THE RELEVANT PROVISIONS OF THE EMBALMERS AND FUNERAL DIRECTORS ACT READ AS FOLLOWS:

12.-(2) FOR THE PURPOSES OF THIS ACT AND THE REGULATIONS, EVERY LICENSED FUNERAL DIRECTOR SHALL BE DEEMED TO BE A LICENSED EMBALMER.

21.-(1) WHERE A FUNERAL DIRECTOR CARRIES ON BUSINESS WITH THE PUBLIC FOR A PERSON, PARTNERSHIP, FIRM OR CORPORATION, HE IS RESPONSIBLE FOR THE SUPERVISION AND MANAGEMENT OF THE BUSINESS, AND IN RESPECT OF SUCH BUSINESS HE AND THE PERSON, PARTNERSHIP, FIRM OR CORPORATION FOR WHOM HE CARRIES ON BUSINESS ARE RESPONSIBLE FOR DUE COMPLIANCE WITH THIS ACT AND THE REGULATIONS.

(2) WHERE TWO OR MORE FUNERAL DIRECTORS CARRY ON BUSINESS WITH THE PUBLIC, EACH OF THE FUNERAL DIRECTORS IS RESPONSIBLE FOR THE SUPERVISION AND MANAGEMENT OF THE BUSINESS AND FOR DUE COMPLIANCE WITH THIS ACT AND THE REGULATIONS.

4. ALTHOUGH COUNSEL FOR THE APPLICANT ARGUED THAT MR. ELVER'S AUTHORITY IS LIMITED IN VIEW OF THE FACT THAT HE EXERCISES HIS FUNCTIONS SUBJECT TO THE AUTHORITY OF THE PRESIDENT OF THE COMPANY WHICH OWNS THE BUSINESS, IT IS CLEAR FROM THE PROVISIONS OF SECTION 21 OF THE EMBALMERS AND FUNERAL DIRECTORS ACT THAT MR. ELVER, AS FUNERAL DIRECTOR, "IS RESPONSIBLE FOR THE SUPERVISION AND MANAGEMENT OF THE BUSINESS" AND IS FUR-

THAT "RESPONSIBLE FOR DUE COMPLIANCE WITH THIS ACT AND THE REGULATIONS". WE MUST FIND THAT THIS STATUTORY RESPONSIBILITY MUST BE CHARACTERIZED AS A MANAGERIAL FUNCTION WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT. WE THEREFORE FIND THAT DONALD ELVER EXERCISES MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND IS NOT AN EMPLOYEE FOR THE PURPOSES OF THE ACT.

5. SINCE MR. ELVER WAS THE PRIME MOVER IN THE FORMATION OF THE APPLICANT AND HOLDS THE OFFICE OF PRESIDENT OF THE APPLICANT, WE ACCORDINGLY FIND THAT THE APPLICANT IS NOT A TRADE UNION WHICH THE BOARD OUGHT TO CERTIFY IN VIEW OF THE PROHIBITION CONTAINED IN SECTION 12 OF THE LABOUR RELATIONS ACT IN LIGHT OF THE PARTICIPATION BY MR. ELVER IN THE FORMATION AND ADMINISTRATION OF THE APPLICANT.

6. THIS APPLICATION IS THEREFORE DISMISSED.

DECISION OF BOARD MEMBER P. J. O'KEEFFE: FEBRUARY 7, 1973.

THE APPLICANT ADDUCED EVIDENCE RELATING TO THE ORIGINATION, PURPOSE AND FORMATION OF THE APPLICANT ORGANIZATION, THE ADOPTION OF A CONSTITUTION AND ELECTION OF ITS OFFICERS.

MR. DONALD ELVER, THE PRESIDENT OF THE APPLICANT, TESTIFIED THAT HE IS THE FUNERAL DIRECTOR OF THE COLLEGE MEMORIAL FUNERAL CHAPEL IN TORONTO AND THAT HIS DUTIES INCLUDE EMBALMING, ARRANGING FUNERALS AND NEGOTIATING THE PRICE OF FUNERALS WITH RELATIVES OF THE DECEASED. HE REPORTS TO THE PRESIDENT OF THE COMPANY AND ACTS UNDER THE PRESIDENT'S DIRECTION. THE COMPANY HE WORKS FOR IS SMALL AND DOES NOT HAVE ANY VEHICLES OF ITS OWN; WHEN THE COMPANY REQUIRES FUNERAL VEHICLES IT HIRES THEM. TWO OTHER EMPLOYEES WORK FOR THE COMPANY. ONE IS A PART-TIME RELIGIOUS COUNSELLOR AND THE OTHER IS A FULL-TIME MAINTENANCE WORKER. HIS RESPONSIBILITY OVER OTHER EMPLOYEES RELATES ONLY TO THE MAINTENANCEMAN. THE EXTENT OF HIS RESPONSIBILITY OVER THE MAINTENANCEMAN WAS NOT ESTABLISHED IN EVIDENCE.

ALTHOUGH THE STATUTORY PROVISIONS OF THE EMBALMERS AND FUNERAL DIRECTORS ACT APPEAR TO CLOAK A FUNERAL DIRECTOR WITH RESPONSIBILITY FOR "SUPERVISION AND MANAGEMENT OF THE BUSINESS" AND IT WOULD APPEAR PRIMA FACIE FROM A READING OF THE ACT THAT A "FUNERAL DIRECTOR" COULD BE EQUATED WITH A PERSON EXERCISING A MANAGERIAL FUNCTION WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT, NEVERTHELESS THE DIRECT EVIDENCE OF DONALD ELVER RELATING TO HIS DUTIES AND THE EXERCISE OF THESE DUTIES, SUBJECT TO THE AUTHORITY OF THE PRESIDENT OF HIS COMPANY, CLEARLY ESTABLISHES THAT HE IS NOT A PERSON WHO EXERCISES MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT IN MY VIEW.

IN DECIDING THIS MATTER I ADDRESS ONE QUESTION TO MYSELF, NAMELY, "IS THE APPLICANT A TRADE UNION AS DEFINED BY THE LABOUR RELATIONS ACT?" HAVING CAREFULLY REVIEWED ALL OF THE EVIDENCE IN THIS CASE AND TAKING INTO CONSIDERATION THE DIRECT EVIDENCE OF DONALD ELVER RELATING TO HIS ACTUAL

DUTIES AND RESPONSIBILITIES, MY ANSWER TO THE QUESTION IS IN THE AFFIRMATIVE. I AM SATISFIED THAT THE APPLICANT HAS ESTABLISHED THAT IT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.

3119-72-R: PRINTING SPECIALTIES AND PAPER PRODUCTS UNION, LOCAL 466  
(APPLICANT) v. J. H. MCNAIRN LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS F. W. MURRAY AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: E. HODGES, R. WELTER AND DAVID LEE FOR THE APPLICANT; J. T. HEATHER AND K. WATSON FOR THE RESPONDENT; G. STERNBERG FOR A GROUP OF EMPLOYEES.

DECISION OF THE BOARD: FEBRUARY 8, 1973.

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3. THE TERMINAL DATE FIXED FOR THIS APPLICATION WAS JANUARY 30, 1973. NOTICE OF THE APPLICATION WAS POSTED ON THE RESPONDENT'S PREMISES ON JANUARY 24, 1973. A GROUP OF EMPLOYEES MAILED A STATEMENT OF OBJECTIONS TO THE BOARD BY REGISTERED POST ON FEBRUARY 1, 1973. SINCE THE STATEMENT OF OBJECTIONS WAS FILED WITH THE BOARD SUBSEQUENT TO THE TERMINAL DATE, THE REGISTRAR OF THE BOARD RETURNED THE DOCUMENT ON FEBRUARY 2, 1973. AT THE HEARING IN THIS MATTER, REPRESENTATIONS WERE MADE ON BEHALF OF THE EMPLOYEES THAT THE BOARD SHOULD ENLARGE THE TIME FOR RECEIVING THE STATEMENT OF OBJECTIONS AND PERMIT THE LATE FILING OF THE OBJECTIONS. IN SUPPORT OF THE ARGUMENT THE OBJECTORS RELIED UPON THE PROVISIONS OF SECTION 103 OF THE LABOUR RELATIONS ACT. IN VIEW OF THE FACT THAT THE EMPLOYEES HAD NOTICE OF THE APPLICATION ON JANUARY 24, THE BOARD IS OF THE VIEW THAT THE EMPLOYEES HAD AMPLE OPPORTUNITY TO PREPARE AND FORWARD ANY OBJECTIONS THEY MAY HAVE HAD ON OR BEFORE THE TERMINAL DATE OF JANUARY 30, 1973. WHILE THE BOARD HAS AUTHORITY UNDER SECTION 57 OF THE BOARD'S RULES OF PROCEDURE TO ENLARGE THE TIME PRESCRIBED BY THESE RULES, IT HAS BEEN THE BOARD'S CONSISTENT PRACTICE TO REFUSE TO ENLARGE THE TERMINAL DATE TO PERMIT THE LATE FILING OF MEMBERSHIP EVIDENCE IN SUPPORT OF OR IN OPPOSITION TO APPLICATIONS FOR CERTIFICATION WHERE THE EMPLOYEES HAVE HAD AMPLE NOTICE OF THE APPLICATION IN ACCORDANCE WITH THE PROVISIONS OF SECTION 2 OF THE BOARD'S RULES OF PROCEDURE. THE BOARD HAS CONSISTENTLY REQUIRED STRICT COMPLIANCE WITH THE PROVISIONS OF SECTION 48 OF THE BOARD'S RULES OF PROCEDURE WITH RESPECT TO THE FILING OF MEMBERSHIP EVIDENCE. THE BOARD IS THEREFORE NOT PREPARED, IN THE CIRCUMSTANCES OF THIS CASE, TO GRANT THE REQUEST MADE ON BEHALF OF SOME OF THE RESPONDENT'S EMPLOYEES TO ENLARGE THE TIME TO PERMIT THE LATE FILING OF THE DOCUMENT IN OPPOSITION TO THIS APPLICATION.

4. IT SHOULD BE NOTED THAT WHILE THE OBJECTORS RELIED UPON THE PROVISIONS OF SECTION 103 OF THE LABOUR RELATIONS ACT THAT THIS SECTION



IS DIRECTED TO THE COURTS RATHER THAN TO THE BOARD (SEE REGINA V. WEILER ET AL. EX PARTE UNION CARBIDE CANADA LIMITED, 68 CLLC ¶14,137). ANY AUTHORITY THE BOARD MIGHT HAVE WITH RESPECT TO TECHNICAL DEFECTS IS CONTAINED IN SECTION 57 OF THE BOARD'S RULES OF PROCEDURE. THE NATURE OF THE OBJECTORS' REQUEST IN THIS MATTER, HOWEVER, CONCERNS MORE THAN A MERE TECHNICAL DEFECT SINCE IT GOES TO THE SUBSTANCE OF THE APPLICANT'S MEMBERSHIP EVIDENCE.

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6. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

2844-72-R: PAUL HURST (APPLICANT) V. RETAIL CLERKS INTERNATIONAL ASSOCIATION (RESPONDENT).

RE: BELTON-QUINN LUMBER LIMITED

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS J. D. BELL AND O. HODGES.

APPEARANCES AT THE HEARING: DAVID W. GRANT FOR THE APPLICANT; ALYK RYDER AND C. EVANS FOR THE RESPONDENT; W. G. PHELPS AND R. MOSELEY FOR BELTON-QUINN LUMBER LIMITED.

DECISION OF THE BOARD: FEBRUARY 13, 1973.

1. THIS IS AN APPLICATION UNDER SECTION 49 OF THE LABOUR RELATIONS ACT FOR A DECLARATION THAT THE RESPONDENT NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT FOR WHICH IT IS THE BARGAINING AGENT.

2. THE APPLICANT, UNDER QUESTIONING, INFORMED THE BOARD THAT THERE HAD BEEN A PRIOR DOCUMENT CIRCULATED IN OPPOSITION TO THE RESPONDENT AS THE BARGAINING AGENT PRIOR TO THE STATEMENT OF DESIRE WHICH WAS FILED WITH THIS APPLICATION. THIS PRIOR DOCUMENT WAS NOT FILED WITH THE BOARD. THE RESPONDENT, ALTHOUGH IT HAD KNOWLEDGE OF THIS EARLIER DOCUMENT, DID NOT FILE WITH THE BOARD ANY ALLEGATIONS OF IMPROPER OR IRREGULAR CONDUCT IN CONNECTION WITH EITHER THE PRIOR DOCUMENT OR THE STATEMENT OF DESIRE WHICH ACCOMPANIED THIS APPLICATION.

3. THE RESPONDENT INFORMED THE BOARD THAT IT DESIRED TO CALL EVIDENCE RELATING TO THIS PRIOR DOCUMENT. IT WAS THE POSITION OF THE RESPONDENT THAT THIS EVIDENCE WOULD DESCRIBE MORE PRECISELY THE TIME DURING WHICH THE PRIOR DOCUMENT WAS CIRCULATED AND WOULD ALSO DESCRIBE THE TERMS AND PURPOSES OF THE PRIOR DOCUMENT AND ITS RELATION TO THE STATEMENT OF DESIRE WHICH ACCOMPANIED THIS APPLICATION. THE RESPONDENT MAINTAINED THAT THE STATEMENT OF DESIRE WHICH ACCOMPANIED THIS APPLICATION WAS REALLY A REPRODUCTION, A RE-AFFIRMATION OR A RE-DECLARATION OF THE PRIOR DOCUMENT.

4. AT THE HEARING, THE BOARD RULED THAT HAVING REGARD TO THE FACT

THAT THE RESPONDENT HAD NOT FILED ANY ALLEGATIONS OF IMPROPER OR IRREGULAR CONDUCT IN RELATION TO THE STATEMENT OF DESIRE, THE RESPONDENT WOULD NOT BE PERMITTED TO CALL EVIDENCE RELATING TO THE PRIOR DOCUMENT.

5. AFTER THIS RULING BY THE BOARD, THE RESPONDENT THEN ATTEMPTED TO RAISE AN ADDITIONAL GROUND IN SUPPORT OF ITS CONTENTION THAT IT OUGHT TO BE ALLOWED TO CALL EVIDENCE IN CONNECTION WITH THE PRIOR DOCUMENT. THE BOARD STATED THAT IT HAD ASKED THE RESPONDENT TO EXPLAIN THE PURPOSE AND INTENT OF THE EVIDENCE IT WISHED TO CALL PRIOR TO THE RULING OF THE BOARD REFERRED TO IN PARAGRAPH FOUR HEREIN, AND, THAT IT HAD HEARD THE REPRESENTATIONS OF THE PARTIES AND HAD RULED AGAINST THE RESPONDENT. THE BOARD THEN RULED THAT THE RESPONDENT WAS ATTEMPTING TO ADVANCE AN ADDITIONAL GROUND FOR THE RECEPTION OF EVIDENCE REGARDING THE PRIOR DOCUMENT WHICH IT OUGHT TO HAVE RAISED PRIOR TO THE FIRST RULING BY THE BOARD REFERRED TO IN PARAGRAPH FOUR HEREIN. SINCE THE RESPONDENT HAD HAD THIS OPPORTUNITY TO MAKE ITS POSITION CLEAR TO THE BOARD, THE REQUEST OF THE RESPONDENT TO RAISE AN ADDITIONAL GROUND IN SUPPORT OF ITS POSITION THAT THE BOARD OUGHT TO HEAR EVIDENCE REGARDING THE PRIOR DOCUMENT WAS DENIED.

6. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FIFTY PER CENT OF THE EMPLOYEES OF BELTON-QUINN LUMBER LIMITED IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, HAD VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT UNION ON DECEMBER 21, 1972, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING THE NUMBER OF PERSONS WHO HAVE VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT UNION UNDER SECTION 49(3) OF THE SAID ACT.

7. THE BOARD DIRECTS THAT A REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES OF BELTON-QUINN LUMBER LIMITED. THOSE ELIGIBLE TO VOTE ARE ALL EMPLOYEES OF BELTON-QUINN LUMBER LIMITED AT GUELPH, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN.

8. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BE REPRESENTED BY THE RESPONDENT IN THEIR EMPLOYMENT RELATIONS WITH BELTON-QUINN LUMBER LIMITED.

9. THE MATTER IS REFERRED TO THE REGISTRAR.

1599-71-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE UNIVERSITY OF WESTERN ONTARIO (RESPONDENT).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F.W. MURRAY.

## DECISION OF THE BOARD:

FEBRUARY 13, 1973.

1. THIS IS AN APPLICATION FOR CERTIFICATION IN WHICH THE APPLICANT REQUESTED A PRE-HEARING REPRESENTATION VOTE. BECAUSE THE APPROPRIATENESS OF THE BARGAINING UNIT WAS PLACED IN ISSUE A VOTING CONSTITUENCY WAS FIXED BY THE BOARD AND IT WAS ORDERED THAT THE VOTE PROCEED IN THE VOTING CONSTITUENCY AND THAT THE BALLOT BOX BE SEALED AND THE BALLOTS NOT COUNTED PENDING A FURTHER DIRECTION WITH RESPECT TO THE QUESTION OF THE BARGAINING UNIT.
  
2. IN A DECISION DATED DECEMBER 20, 1972, THE BOARD DESCRIBED THE BARGAINING UNIT WHICH IT FOUND TO BE APPROPRIATE. SUBSEQUENTLY REQUESTS WERE MADE TO CLARIFY THE DESCRIPTION OF THE BARGAINING UNIT AND THE PARTIES HAVE NOW REACHED AGREEMENT ON THAT DESCRIPTION. ACCORDINGLY PARAGRAPH 10 OF THE DECISION DATED DECEMBER 20, 1972, IS DELETED AND IN PLACE THEREOF THE FOLLOWING DESCRIPTION OF THE BARGAINING UNIT IS SUBSTITUTED:  
  
 ALL NON-PROFESSIONAL EMPLOYEES OF THE RESPONDENT AT THE UNIVERSITY OF WESTERN ONTARIO LIBRARIES AT LONDON, SAVE AND EXCEPT UNIT HEADS, PERSONS ABOVE THE RANK OF UNIT HEAD, PROFESSIONAL LIBRARIANS, LIBRARY PERSONNEL OFFICER, ADMINISTRATIVE ASSISTANTS, SECRETARY TO THE CHIEF LIBRARIAN, SECRETARY TO THE ASSISTANT DIRECTORS, SECRETARY TO THE LIBRARY PERSONNEL OFFICER, PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT WITH THE CANADIAN UNION OF OPERATING ENGINEERS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD.
  
3. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT THE UNIT HEADS REFERRED TO IN THE BARGAINING UNIT ARE AS FOLLOWS: P. McVEIGH; E. FRENCH; M. COLLEY; N. GEADAH; B. DEHN; B. GRAINGER AND SHARON ROBERTSON.
  
4. ANOTHER DISPUTE HAS ALSO ARISEN BETWEEN THE PARTIES WITH RESPECT TO CERTAIN PERSONS EMPLOYED IN THE DEPARTMENTAL LIBRARIES. THESE DEPARTMENTAL LIBRARIES ARE AS FOLLOWS: SPANISH AND ITALIAN; ECONOMICS; FINE ARTS; PHYSICS; COMPUTER; S.L.I.S. THE UNION CONTENDS THAT PERSONS EMPLOYED IN THESE LIBRARIES DO NOT COME UNDER THE JURISDICTION OF THE CHIEF LIBRARIAN, WHILE THE RESPONDENT ALLEGES THAT THERE WAS AN AGREEMENT BETWEEN THE PARTIES THAT PERSONS EMPLOYED IN THESE LIBRARIES WOULD COME WITHIN THE BARGAINING UNIT.
  
5. HAD WE BEEN REQUIRED TO DEAL WITH THIS MATTER ON THE BASIS OF THE REPORT OF THE EXAMINER, WE WOULD HAVE FOUND THAT THESE LIBRARIES ARE NOT UNDER THE JURISDICTION OF THE CHIEF LIBRARIAN AND WE WOULD NOT HAVE INCLUDED PERSONS EMPLOYED IN THESE LIBRARIES IN THE BARGAINING UNIT.



6. HOWEVER, THIS MATTER ORIGINALLY AROSE BEFORE AN EXAMINER OF THE BOARD WHO MET WITH THE PARTIES AND WHO FILED A PRE-HEARING VOTE MEETING REPORT. THAT REPORT INDICATES CERTAIN AGREEMENTS ARRIVED AT BETWEEN THE PARTIES. THE REPORT SPECIFICALLY SETS OUT AN AGREEMENT OF THE PARTIES THAT PERSONS AT THE SCHOOL OF LIBRARY AND INFORMATION SCIENCE (S.L.I.S.) ARE INCLUDED IN THE BARGAINING UNIT. IN ADDITION, THE INCLUSION ON THE VOTERS' LIST OF PERSONS EMPLOYED AT THE OTHER DEPARTMENTAL LIBRARIES WAS NOT CHALLENGED BY THE UNION WHICH IS USUAL WHERE THERE IS DISAGREEMENT. THIS INDICATES AN INTENT TO INCLUDE THESE PERSONS IN THE APPROPRIATE BARGAINING UNIT, WHICH IS CORROBORATED BY THE LETTER SENT BY THE UNION APPROXIMATELY FOUR WEEKS AFTER THE MEETING WITH THE EXAMINER WHEREIN THE UNION REQUESTED THAT THE BALLOTS OF THOSE PERSONS IN THE DEPARTMENTAL LIBRARIES BE SEGREGATED AND NOT COUNTED. THE INFERENCE FROM THAT ACT IS THAT THE PARTIES HAD ORIGINALLY INTENDED THAT PERSONS EMPLOYED IN THE DEPARTMENTAL LIBRARIES BE INCLUDED IN THE BARGAINING UNIT.

7. WHERE AGREEMENTS ARE MADE BEFORE AN OFFICER OF THE BOARD THEY ARE NOT TO BE TREATED LIGHTLY. IN THIS CASE THE UNION SPECIFICALLY AGREED THAT PERSONS EMPLOYED AT THE SCHOOL OF LIBRARY AND INFORMATION SCIENCE SHOULD BE INCLUDED IN THE BARGAINING UNIT. CONSISTENT WITH THAT AGREEMENT IT IS ALSO A REASONABLE INFERENCE THAT THE UNION AGREED THAT OTHER PERSONS EMPLOYED AT THE DEPARTMENTAL LIBRARIES SHOULD BE INCLUDED IN THE APPROPRIATE BARGAINING UNIT. THE UNION SHOULD NOT NOW BE ALLOWED TO WITHDRAW FROM ITS AGREEMENT. THIS TYPE OF CONDUCT SHOULD BE DISCOURAGED.

8. ACCORDINGLY, AFTER CONSIDERING THE AGREEMENT OF THE PARTIES THE BOARD IS OF THE OPINION THAT PERSONS IN THE DEPARTMENTAL LIBRARIES WHO CAST BALLOTS ARE ENTITLED TO HAVE THEIR BALLOTS COUNTED IN THE REPRESENTATION VOTE.

9. FOR THE PURPOSES OF CLARITY THE BOARD FURTHER NOTES THE AGREEMENT OF THE PARTIES THAT PERSONS IN THE DEPARTMENTAL LIBRARIES ARE INCLUDED IN THE BARGAINING UNIT.

10. THE REGISTRAR IS DIRECTED TO PLACE THE BALLOTS CAST BY PERSONS WHO ARE IN THE DEPARTMENTAL LIBRARIES INTO THE BALLOT BOX WITH THE OTHER BALLOTS AND IS FURTHER DIRECTED TO COUNT THE BALLOTS.

RE: "DISSENT TO MAJORITY DECISION REPORTED IN [1972] OLRB M.R. 991 (DEC.)".  
 2022-72-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. ALLAN G. COOK LIMITED (RESPONDENT).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS H. J. F. ADE AND E. BOYER.

DECISION OF BOARD MEMBER E. BOYER: FEBRUARY 14, 1973.

1. HAVING CAREFULLY REVIEWED THE EVIDENCE IN LIGHT OF THE BOARD'S PAST PRACTICE, THE MAJORITY'S DECISION TO DIRECT A SECOND VOTE IN THIS APPLICATION CAUSES ME SOME CONCERN. IT IS MY UNDERSTANDING THAT THE PURPOSE OF DIRECTING A REPRESENTATION VOTE IS TO ASCERTAIN THE TRUE WISHES OF EMPLOYEES WITH RESPECT TO WHETHER THEY DESIRE TO BE REPRESENTED BY AN APPLICANT TRADE UNION FOR COLLECTIVE BARGAINING PURPOSES. IN THIS REGARD, NONE OF THE EMPLOYEES CHALLENGING THE OUTCOME OF THE VOTE DENIED NOT HAVING NOTICE OF THE REPRESENTATION VOTE NOR WAS IT SUGGESTED THEY WERE DEPRIVED OF THE OPPORTUNITY TO PARTICIPATE IN THE VOTE.

2. IT IS THEREFORE MY OPINION THAT THERE WAS NOTHING INCONSISTENT WITH OR ALIEN TO THE BOARD'S PRACTICE WITH REGARD TO THE INTEGRITY OF THE PROCEDURE ADOPTED IN THE CONDUCT OF THE FIRST VOTE IN THIS MATTER. (SEE CANADIAN WESTINGHOUSE COMPANY LIMITED, O.L.R.B. M.R. SEPTEMBER 1966 372 AT P. 378).

3. SINCE THE REPRESENTATION VOTE TRULY REFLECTED THE WISHES OF THOSE EMPLOYEES WHO CAST BALLOTS AND SINCE MORE THAN FIFTY PER CENT THEREOF WERE CAST IN FAVOUR OF THE APPLICANT TRADE UNION, I WOULD HAVE GRANTED A CERTIFICATE.

1475-71-U: DONALD G. GEBBIE AND J. MICHAEL LONGMOORE (COMPLAINANTS) v. UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, LOCAL 200; FORD MOTOR COMPANY OF CANADA, LIMITED (RESPONDENTS).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS J.D. BELL AND O. HODGES.

APPEARANCES AT THE HEARING: F.W. PARK, MANCE MATHIAS, J.M. LONGMOORE AND D.G. GEBBIE FOR THE COMPLAINANTS; STEVEN HARRIS, L.A. MACLEAN AND JACK TAYLOR FOR UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, LOCAL 200; DONALD J.M. BROWN, GLENN LESLIE, GEORGE A. PECKHAM AND J. PATERSON FOR THE FORD MOTOR COMPANY OF CANADA, LIMITED.

DECISION OF THE BOARD: FEBRUARY 14, 1973.

1. AT THE CONCLUSION OF THE EVIDENCE CALLED BY THE COMPLAINANTS, COUNSEL FOR THE RESPONDENT UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, LOCAL 200 (HEREINAFTER REFERRED TO AS THE "UAW") SUBMITTED THAT THE BOARD SHOULD ON ITS OWN MOTION TERMINATE THE PROCEEDINGS BECAUSE THERE WAS NOT ANY EVIDENCE THAT WOULD INDICATE THAT THE UAW HAD VIOLATED THE ACT. THE FORD MOTOR COMPANY OF CANADA, LIMITED (HEREINAFTER REFERRED TO AS "FORD") ALSO INDICATED THAT THERE WAS NO EVIDENCE THAT WOULD DEMONSTRATE THAT FORD COMMITTED ANY VIOLATION OF THE ACT, AND ON THAT GROUND IT ASKED THE BOARD TO TERMINATE THE PROCEEDINGS ON ITS OWN MOTION. AS WE INDICATED IN AN EARLIER DECISION IN THIS MATTER, THE JURISPRUDENCE OF THIS BOARD WITH RESPECT TO SECTION 60 OF THE ACT IS IN A DEVELOPMENTAL STAGE. IN THESE CIRCUMSTANCES WE ARE NOT PREPARED TO

EXERCISE OUR DISCRETION AND ASK FOR ARGUMENT AT THIS STAGE OF THE PROCEEDINGS.

2. THE RESPONDENTS MAY CHOSE TO ADDUCE FACTS OR NOT TO ADDUCE ANY FURTHER FACTS AS THEY WISH AND WHEN ALL THE PARTIES HAVE INDICATED THAT THEY DO NOT WISH TO ADDUCE ANY FURTHER EVIDENCE BEFORE THE BOARD THE MATTER SHALL BE PROPERLY ARGUED AND THE BOARD WILL ARRIVE AT A DECISION BASED ON THE EVIDENCE AND ON THE ARGUMENT.

3. IN THESE CIRCUMSTANCES THE REGISTRAR IS DIRECTED TO LIST THIS MATTER FOR CONTINUATION OF THE PROCEEDINGS.

2954-72-U: CONRAD ADAM (COMPLAINANT) v. STEED AND EVANS LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND O. HODGES.

APPEARANCES AT THE HEARING: STANLEY SIMPSON AND T. FENWICK FOR THE COMPLAINANT; W. G. PHELPS FOR THE RESPONDENT.

DECISION OF THE BOARD: FEBRUARY 15, 1973.

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2. THIS IS A COMPLAINT UNDER SECTION 79 OF THE LABOUR RELATIONS ACT WHEREIN THE BOARD APPOINTED AN EXAMINER TO INQUIRE INTO AND REPORT TO THE BOARD ON THE DUTIES AND RESPONSIBILITIES OF THE COMPLAINANT.

3. HAVING CONSIDERED THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER DATED JANUARY 8, 1973 AND THE REPRESENTATIONS OF THE PARTIES WITH RESPECT THERETO, WE FIND THAT THE COMPLAINANT, CONRAD ADAM, WAS EMPLOYED BY THE RESPONDENT AS A FOREMAN. WHILE MR. ADAM WOULD LIKE US TO BELIEVE THAT HE WAS HIRED MERELY AS A CARPENTER, IT IS NOTED THAT FOR THE SHORT PERIOD HE WAS ON THE JOB THE RESPONDENT HAD NO NAILS AT THE JOB SITE. IT IS HIGHLY UNLIKELY THAT THE RESPONDENT WOULD EMPLOY A CARPENTER TO PERFORM CARPENTRY FUNCTIONS WITHOUT HAVING THE NECESSARY MATERIALS AVAILABLE FOR HIM TO DO HIS WORK. THE COMPLAINANT WAS HIRED AT THE COMMENCEMENT OF A PROJECT TO ENLARGE CERTAIN BRIDGES ON NO. 2 HIGHWAY NEAR HAMILTON AND HE SPENT THE MAJORITY OF THE SEVEN DAYS HE WAS WORKING FOR THE RESPONDENT SUPERVISING THE WORK OF LABOURERS. WHILE HE DID PERFORM CERTAIN INCIDENTAL DUTIES WHICH MIGHT PROPERLY BE DESCRIBED AS CARPENTERS' FUNCTIONS, IT IS NOTED THAT THE GENERAL FOREMAN ALSO USED THE CARPENTRY TOOLS WHICH THE COMPLAINANT HAD BROUGHT TO THE JOB SITE. BECAUSE OF THE EARLY STAGES OF THE PROJECT AND THE SMALL NUMBER OF EMPLOYEES EMPLOYED BY THE RESPONDENT, MANY OF THE MANAGERIAL FUNCTIONS WHICH THE COMPLAINANT WAS HIRED TO PERFORM WERE NOT PERFORMED BY HIM DURING THE SEVEN DAYS HE WAS ON THE JOB SITE. HOWEVER THAT MAY BE, IT IS CLEAR FROM THE EVIDENCE THAT MR. ADAM WAS HIRED TO ACT AS FOREMAN IN



A SUPERVISORY CAPACITY OVER OTHER EMPLOYEES. IT IS FURTHER CLEAR THAT MR. ADAM HAD KNOWLEDGE OF THIS FACT AT THE TIME HE WAS HIRED. AS INDICATED ABOVE, MR. ADAM SPENT THE MAJORITY OF HIS TIME SUPERVISING LABOURERS IN CLEARING THE JOB SITE OF UNDERBRUSH. WHILE PERFORMING THESE SUPERVISORY FUNCTIONS HE DID NOT PERFORM MANUAL LABOUR. WE ACCORDINGLY FIND ON THE EVIDENCE BEFORE US THAT SINCE HE WAS PRIMARILY INVOLVED IN SUPERVISORY FUNCTIONS AND ONLY PERFORMED INCIDENTAL FUNCTIONS WHICH A CARPENTER MIGHT OTHERWISE PERFORM, THE FUNCTIONS THAT THE COMPLAINANT WAS HIRED TO PERFORM AND INDEED WERE PERFORMED BY HIM DURING HIS PERIOD WITH THE RESPONDENT WERE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT. WE THEREFORE FIND THAT THE COMPLAINANT WAS NOT AN EMPLOYEE OF THE RESPONDENT FOR THE PURPOSES OF THE ACT.

4. WE DIRECT THE REGISTRAR TO LIST THIS MATTER FOR CONTINUATION OF HEARING TO AFFORD THE PARTIES AN OPPORTUNITY TO MAKE REPRESENTATIONS AS TO THE EFFECT THAT SECTION 80 OF THE ACT MAY HAVE ON THE COMPLAINANT'S RIGHT TO RELIEF UNDER SECTION 79 IN VIEW OF OUR FINDING THAT THE COMPLAINANT WAS NOT AN EMPLOYEE OF THE RESPONDENT FOR THE PURPOSES OF THE ACT.

2775-72-R: ASSOCIATION OF NURSES ST. JOSEPH'S HOSPITAL, LONDON (APPLICANT) V. THE SISTERS OF ST. JOSEPH OF THE DIOCESE OF LONDON, IN ONTARIO, OWNERS AND OPERATORS, ST. JOSEPH'S HOSPITAL, LONDON (RESPONDENT).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND F. W. MURRAY.

APPEARANCES AT THE HEARING: DONALD F.O. HERSEY AND MARGARET O'CONNOR FOR THE APPLICANT; D.W. DURDIN AND JOSEPH RYAN FOR THE RESPONDENT.

DECISION OF THE BOARD: FEBRUARY 16, 1973.

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3. IN ORDER TO UNDERSTAND THIS APPLICATION IT IS NECESSARY TO BRIEFLY DESCRIBE THE HISTORY OF THIS APPLICATION. ON SEPTEMBER 17, 1968, THE BOARD GRANTED TWO CERTIFICATES TO THE NURSES' ASSOCIATION ST. JOSEPH'S HOSPITAL FOR THE FULL TIME NURSING STAFF AND FOR THE PART TIME NURSING STAFF. FOLLOWING THE GRANTING OF THESE TWO CERTIFICATES COLLECTIVE AGREEMENTS WERE ENTERED INTO.

4. IN THEIR COLLECTIVE AGREEMENT THE PARTIES AMENDED THE DESCRIPTION OF THE BARGAINING UNIT FOR THE PART TIME EMPLOYEES. THE EFFECT OF THE AMENDMENT WAS TO OMIT CERTAIN PERSONS WHO WE MAY FOR CONVENIENCE REFER TO AS "CASUAL EMPLOYEES". SUBSEQUENTLY, THE NURSES' ASSOCIATION ST. JOSEPH'S HOSPITAL, ATTEMPTED TO NEGOTIATE THE TERMS OF THE COLLECTIVE AGREEMENT IN SUCH A WAY AS TO BRING THESE CASUAL EMPLOYEES BACK INTO THE BARGAINING UNIT. THE MATTER PROCEEDED TO ARBITRATION UNDER THE HOSPITAL

LABOUR DISPUTES ARBITRATION ACT AND REPRESENTATIONS WERE MADE BEFORE THE ARBITRATION TRIBUNAL, BUT THE UNION WAS UNSUCCESSFUL IN HAVING THOSE PERSONS REINSTATED INTO THE BARGAINING UNIT.

5. THERE THEN FOLLOWED A NUMBER OF APPLICATIONS TO THIS BOARD WHEREBY THE UNION SOUGHT TO BRING THESE CASUAL EMPLOYEES WITHIN THE BARGAINING UNIT. FOR VARIOUS REASONS THESE APPLICATIONS DID NOT SUCCEED. THIS APPLICATION HAS NOW BEEN BROUGHT AND WE ARE SATISFIED FROM THE REPRESENTATIONS MADE THAT THE APPLICANT IS ENTITLED TO WHAT THIS BOARD HAS HERETOFORE REFERRED TO AS A TAG-END BARGAINING UNIT; SEE AJAX AND PICKERING GENERAL HOSPITAL (1972) OLRB REP. 477.

6. THE BOARD INDICATED ITS VIEWS AT THE HEARING AND THEN SUBSEQUENTLY THE COUNT WAS ANNOUNCED WHICH INDICATED THAT THE APPLICANT WAS IN A CERTIFIABLE POSITION. THE RESPONDENT NOW CONTENDS THAT IT DID NOT ANTICIPATE A TAG-END BARGAINING UNIT AND THAT THE SCHEDULES OF EMPLOYEES WHICH IT FILED WERE NOT ACCURATE. IT NOW SEEKS TO FILE MORE APPROPRIATE SCHEDULES, AND ASKED FOR SOME DIRECTION WITH RESPECT TO THE SCHEDULES IT SHOULD FILE. THE APPLICANT SUGGESTS THAT THE RESPONDENT BE DIRECTED TO COMPILE PROPER SCHEDULES IF THE BOARD CONSIDERED THOSE ALREADY FILED TO BE INADEQUATE, AND ASKED THAT THE APPLICATION PROCEED IN A NORMAL FASHION.

7. IN OUR VIEW THE DECISION OF THE BOARD WHICH WAS MADE IN SEPTEMBER OF 1968 GRANTING A CERTIFICATE FOR A FULL TIME UNIT AND ANOTHER CERTIFICATE FOR A PART TIME UNIT WAS PROPER. IN SYDENHAM DISTRICT HOSPITAL (1967) MAY OLRB MTHLY. REP. 135 THE BOARD VERY CAREFULLY SET FORTH HOW IT DEALT WITH THE ISSUES OF FULL TIME AND PART TIME EMPLOYEES AND THE CONCEPT OF PERSONS "REGULARLY EMPLOYED". AT PAGE 137 THE BOARD SAID:

"...A SECONDARY QUESTION WHICH MUST ALSO BE CONSIDERED IS WHICH PERSONS ARE "REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK". THE QUESTION UNDER CONSIDERATION IS NOT INTENDED TO DISTINGUISH SUCH PERSONS FROM PERSONS WHO ARE "IRREGULARLY" EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK. EITHER THE PERSONS WITH WHOM WE ARE CONCERNED ARE EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK OR THEY ARE EMPLOYED FOR MORE THAN 24 HOURS PER WEEK. THE EMPLOYEES MUST FALL INTO ONE OR OTHER OF THESE TWO CATEGORIES. THERE IS NO THIRD CATEGORY INVOLVED IN THIS QUESTION."

8. IN THIS CASE BECAUSE OF ADJUSTMENTS TO THE BARGAINING UNIT BY THE PARTIES DURING NEGOTIATIONS THEY HAVE BY THEIR OWN HAND CREATED A THIRD CATEGORY OF CASUAL EMPLOYEE. BUT FOR THEIR ADJUSTMENT WE WOULD

HAVE TREATED THESE CASUAL EMPLOYEES AS FALLING WITHIN THE PART TIME BARGAINING UNIT AND IN SEPTEMBER OF 1968 THIS BOARD DID SO TREAT THEM. SINCE THIS BOARD REGARDS THESE PERSONS AS PROPERLY FALLING WITHIN THE PART TIME BARGAINING UNIT, WE SEE NO REASON TO DEPART FROM THE PRACTICE IN THE SYDENHAM DISTRICT HOSPITAL CASE, SUPRA, WHICH VERY CLEARLY SETS OUT HOW THE BOARD DETERMINES THE EMPLOYEES FOR THE PURPOSE OF THE COUNT. IN THAT CASE THE BOARD CONSIDERED THE PERIOD OF SEVEN WEEKS PRIOR TO THE MAKING OF THE APPLICATION FOR THE PURPOSES OF DETERMINING WHICH PERSONS BELONG IN THE PART TIME BARGAINING UNIT. IN THESE CIRCUMSTANCES WE ARE NOT PREPARED TO DEPART FROM THAT PRACTICE.

9. ACCORDINGLY THE RESPONDENT IS REQUIRED TO FILE SCHEDULES FOR THE PERIOD SEVEN WEEKS PRIOR TO THE MAKING OF THE APPLICATION IN ORDER TO DETERMINE WHO ARE THE EMPLOYEES THAT PROPERLY FALL INTO THE INSTANT APPLICATION. PERSONS WHO ARE INCLUDED IN THE FULL TIME BARGAINING UNIT AND IN THE ADJUSTED PART TIME BARGAINING UNIT ARE NOT TO BE INCLUDED ON THOSE SCHEDULES.

10. IN ORDER TO ASSIST THE PARTIES AND AFTER CONSIDERING THE REPRESENTATIONS MADE WITH RESPECT TO THE BARGAINING UNIT WE THEREFORE DETERMINE THAT THE APPROPRIATE BARGAINING UNIT IN CONNECTION WITH THIS APPLICATION IS ALL LAY, REGISTERED AND GRADUATE NURSES EMPLOYED IN A NURSING CAPACITY AT ST. JOSEPH'S HOSPITAL BY THE RESPONDENT IN LONDON, SAVE AND EXCEPT HEAD NURSES, PERSONS ABOVE THE RANK OF HEAD NURSE, NURSES IN CHARGE INTENSIVE CARE NURSERY, CHARGE NURSE OF DIALYSIS UNIT, NURSE IN CHARGE CENTRAL SUPPLY, EMPLOYEE HEALTH NURSE, NURSES ON THE INTRAVENOUS THERAPY TEAM AND NURSES COVERED BY SUBSISTING COLLECTIVE AGREEMENTS BETWEEN THE RESPONDENT AND THE NURSES' ASSOCIATION ST. JOSEPH'S HOSPITAL, LONDON, ONTARIO.

11. THE RESPONDENT IS DIRECTED TO FILE APPROPRIATE SCHEDULES WITH THE REGISTRAR WITHIN SEVEN DAYS FROM THE DATE OF RECEIPT OF THIS DECISION.

1635-71-R: THE MECHANICAL CONTRACTORS ASSOCIATION OF OTTAWA (APPLICANT) V. SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL UNION 47 (RESPONDENT).

- AND -

1637-71-R: THE MECHANICAL CONTRACTORS ASSOCIATION OF OTTAWA (APPLICANT) V. SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL UNION 47 (RESPONDENT).

BEFORE: D.E. FRANKS, VICE-CHAIRMAN, AND BOARD MEMBERS H.J.F. ADE AND E. BOYER.

APPEARANCES AT THE HEARING: H.G. BURCHELL, J.B. CHADWICK AND W.S. COOK FOR THE APPLICANT; RONALD S. TAYLOR AND RAYMOND GUERTIN FOR THE RESPONDENT.

DECISION OF THE BOARD:

FEBRUARY 16, 1973.



1. IN THESE TWO APPLICATIONS THE APPLICANT IS SEEKING TO BE ACCREDITED AS THE EXCLUSIVE BARGAINING AGENT FOR UNITS OF EMPLOYERS WHO ENGAGE IN COLLECTIVE BARGAINING WITH THE RESPONDENT IN RESPECT OF CERTAIN OF THEIR EMPLOYEES. THE DIFFERENCE BETWEEN THESE TWO CASES IS THAT BOARD FILE NO. 1635-71-R RELATES TO THE RESIDENTIAL SECTOR OF THE CONSTRUCTION INDUSTRY, WHEREAS BOARD FILE NO. 1637-71-R RELATES TO THE INDUSTRIAL, COMMERCIAL AND INSTITUTIONAL SECTOR OF THE CONSTRUCTION INDUSTRY. IN OTHER RESPECTS THE APPLICATIONS ARE SIMILAR. AT THE HEARING IN THIS MATTER THE APPLICANT MADE THE REQUEST THAT THE BOARD CONSOLIDATE THESE CASES. THE BOARD RESERVED ITS DECISION WITH RESPECT TO THE CONSOLIDATION OF THESE MATTERS; HOWEVER, THE TWO CASES WERE HEARD TOGETHER. THE REASONS FOR THE REQUEST BY THE APPLICANT WILL BE DISCUSSED IN PARAGRAPH 5 OF THIS DECISION WHICH DEALS WITH THE APPROPRIATE UNIT OF EMPLOYERS FOR ACCREDITATION.

2. WITH THE EXCEPTION OF CERTAIN EMPLOYERS WHICH WILL BE DEALT WITH SPECIFICALLY IN PARAGRAPH 7 OF THIS DECISION, ALL PERSONS AFFECTED BY BOTH THESE APPLICATIONS HAVE HAD NOTICE OF BOTH APPLICATIONS. THE BOARD IS SATISFIED THAT NO INTERESTS ARE INVOLVED WHICH WOULD BE PREJUDICED BY AN ORDER CONSOLIDATING THESE TWO APPLICATIONS AT THIS TIME. ACCORDINGLY THESE APPLICATIONS ARE HEREBY CONSOLIDATED.

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5. THE APPLICANT REQUESTED CONSOLIDATION OF THESE CASES FOR THE PURPOSE OF COMBINING THE SECTORS WHICH WERE THE SUBJECT MATTER OF THE SEPARATE APPLICATIONS. THE APPLICANT AND THE RESPONDENT ARE PARTIES TO A COLLECTIVE AGREEMENT DATED MAY 10, 1971, WHICH IS BINDING ON MORE THAN ONE EMPLOYER IN THE AREA AND SECTORS THAT ARE THE SUBJECT MATTER OF THIS APPLICATION. THE EVIDENCE IS THAT THIS COLLECTIVE AGREEMENT FORMS THE BASIS FOR THE JURISDICTION OF THE BOARD IN BOTH SECTORS OF THE CONSTRUCTION INDUSTRY. IN ADDITION, THERE IS SUFFICIENT EVIDENCE THAT THE EMPLOYERS AND EMPLOYEES AFFECTED BY THIS APPLICATION WORK IN BOTH SECTORS WHICH THE APPLICANT IS SEEKING TO HAVE COMBINED. ON THE BASIS OF THE EVIDENCE BEFORE THE BOARD AND IN THE LIGHT OF THE FILINGS BY THE INDIVIDUAL EMPLOYERS IN FORM 68 WITH RESPECT TO THE APPLICATIONS FOR EACH SECTOR SEPARATELY THE BOARD IS OF THE OPINION THAT THIS IS A CASE WHERE THE APPROPRIATE SECTOR OF THE CONSTRUCTION INDUSTRY FOR COLLECTIVE BARGAINING IS A COMBINATION OF THE INDUSTRIAL, COMMERCIAL AND INSTITUTIONAL SECTOR AND THE RESIDENTIAL SECTOR. THE GEOGRAPHIC AREA OF THIS COLLECTIVE AGREEMENT IS "THE CITY OF OTTAWA AND THE COUNTIES OF CARLETON, DUNDAS, GLENGARRY, GRENVILLE, LANARK, PRESCOTT, RENFREW, RUSSELL, STORMONT AND THAT PART OF NIPISSING COUNTY SOUTH OF A LINE FROM MATTAWA ON THE QUEBEC BORDER TO THE NORTHWEST CORNER OF BOYD TOWNSHIP, SOUTHWEST TO THE NORTHWEST CORNER OF PAXTON TOWNSHIP". SINCE THIS COLLECTIVE AGREEMENT COVERS BOTH SECTORS THE BOARD IS SATISFIED THAT THE GEOGRAPHIC AREA SET OUT IN THE COLLECTIVE AGREEMENT IS THE APPROPRIATE GEOGRAPHIC AREA FOR COLLECTIVE BARGAINING. THE BOARD THEREFORE FINDS THAT ALL EMPLOYERS OF SHEET METAL WORKERS AND SHEET METAL WORKER APPRENTICES FOR WHOM THE RESPONDENT HAS BARGAINING RIGHTS IN THE JUDICIAL DISTRICT OF OTTAWA - CARLETON AND THE

UNITED COUNTIES OF PRESCOTT AND RUSSELL, THE UNITED COUNTIES OF STORMONT, DUNDAS AND GLENGARRY, THE COUNTIES OF GRENVILLE, LANARK AND RENFREW AND THAT PART OF THE DISTRICT OF NIPISSING SOUTH OF A LINE FROM MATTAWA ON THE QUEBEC BORDER TO THE NORTHWEST CORNER OF BOYD TOWNSHIP, SOUTHWEST TO THE NORTHWEST CORNER OF PAXTON TOWNSHIP IN THE INDUSTRIAL, COMMERCIAL AND INSTITUTIONAL SECTOR AND RESIDENTIAL SECTOR OF THE CONSTRUCTION INDUSTRY, CONSTITUTES A UNIT OF EMPLOYERS APPROPRIATE FOR COLLECTIVE BARGAINING.

6. BECAUSE THE REQUEST TO CONSOLIDATE THESE TWO APPLICATIONS WAS NOT MADE UNTIL THE HEARING OF THIS MATTER BOTH APPLICATIONS HAD BEEN PROCESSED IN ACCORDANCE WITH THE BOARD'S RULES OF PROCEDURE AS SEPARATE APPLICATIONS UP TO THAT POINT. THUS, IN EACH APPLICATION THE RESPONDENT AND THE APPLICANT HAD SUBMITTED LISTS OF EMPLOYERS AFFECTED THE APPLICATION TO THE BOARD'S EXAMINER, AND AS A RESULT A LIST OF EMPLOYERS WAS PREPARED BY THE BOARD AND EACH EMPLOYER ON THE LIST OF EMPLOYERS WAS GIVEN NOTICE OF EACH APPLICATION. THE LIST OF EMPLOYERS IN BOARD FILE NO. 1637-71-R WHICH RELATED TO THE INDUSTRIAL, COMMERCIAL AND INSTITUTIONAL SECTOR OF THE CONSTRUCTION INDUSTRY INCLUDED TWO EMPLOYERS WHICH WERE NOT LISTED IN BOARD FILE NO. 1635-71-R WHICH RELATED TO THE RESIDENTIAL SECTOR OF THE CONSTRUCTION INDUSTRY. THESE EMPLOYERS ARE FRASER-BRACE ENGINEERING CO. LTD. (COMMERCIAL DIVISION) AND STITTSVILLE SHEET METAL. THESE EMPLOYERS WERE NOT INCLUDED IN THE LIST OF EMPLOYERS RELATING TO THE RESIDENTIAL SECTOR BECAUSE THEY WERE KNOWN BY BOTH THE APPLICANT AND THE RESPONDENT TO BE ENGAGED ONLY IN INDUSTRIAL, COMMERCIAL AND INSTITUTIONAL CONSTRUCTION. BOTH OF THESE EMPLOYERS ARE NOT ONLY REPRESENTED BY THE APPLICANT, BUT ARE ALSO CLAIMED AS MEMBERS OF THE APPLICANT ASSOCIATION. FURTHER, THERE IS NO DOUBT THAT THESE EMPLOYERS ARE EMPLOYERS IN THE UNIT OF EMPLOYERS FOUND TO BE APPROPRIATE IN PARAGRAPH 5 SINCE THEY ARE ACTIVELY ENGAGED IN CONSTRUCTION IN THE INDUSTRIAL, COMMERCIAL AND INSTITUTIONAL SECTOR OF THE CONSTRUCTION INDUSTRY. THE BOARD IS THEREFORE SATISFIED THAT THESE EMPLOYERS HAVE HAD SUFFICIENT NOTICE OF THIS APPLICATION.

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10. AS NOTED ABOVE THE APPLICANT HAS FILED EVIDENCE OF REPRESENTATION WITH RESPECT TO TWENTY-ONE EMPLOYERS. ON THE BASIS OF ALL THE EVIDENCE BEFORE US THE BOARD FINDS THAT ON THE DATE OF THE MAKING OF THIS APPLICATION THE APPLICANT REPRESENTED TWENTY OF THE EMPLOYERS ASCERTAINED AS THE NUMBER OF EMPLOYERS UNDER SECTION 115(1)(A) OF THE ACT. THE TWENTY EMPLOYERS SO REPRESENTED BY THE APPLICANT IS THE NUMBER OF EMPLOYERS TO BE ASCERTAINED BY THE BOARD UNDER SECTION 115(1)(B) OF THE ACT. ACCORDINGLY THE BOARD IS SATISFIED THAT A MAJORITY OF THE EMPLOYERS IN THE UNIT OF EMPLOYERS ARE REPRESENTED BY THE APPLICANT EMPLOYERS' ORGANIZATION. IN THIS REGARD IT IS PERHAPS WORTH NOTING THAT A NUMBER OF EMPLOYERS INDICATED IN THEIR EMPLOYER INTERVENTION IN FORM 68 THAT THEY WERE IN SUPPORT OF THE APPLICATION. HOWEVER, WITH RESPECT TO FOUR OF THESE EMPLOYERS THE APPLICANT DID NOT SUBMIT WRITTEN EVIDENCE OF REPRESENTATION IN ACCORDANCE WITH THE BOARD'S RULES OF PROCEDURE AND AS A RESULT HAVE NOT BEEN INCLUDED IN THE DETERMINATION THAT THE APPLICANT REPRESENTS A MAJORITY OF EMPLOYERS IN THE UNIT OF EMPLOYERS.



11. THE ENTITLEMENT OF AN EMPLOYERS' ASSOCIATION TO ACCREDITATION IS BASED ON A "DOUBLE MAJORITY". WE HAVE NOW DEALT WITH THE FIRST OF MAJORITIES THAT AN APPLICANT MUST OBTAIN - A MAJORITY OF EMPLOYERS IN THE UNIT OF EMPLOYERS. WE NOW TURN TO THE MATTER OF WHETHER THESE EMPLOYERS EMPLOYED A MAJORITY OF THE EMPLOYEES AFFECTED BY THE APPLICATION. ON THE BASIS OF THE FILINGS BY INDIVIDUAL EMPLOYERS IN SCHEDULE "H" ACCOMPANYING THE EMPLOYER INTERVENTION THE BOARD FINDS THAT IN THE WEEKLY PAYROLL PERIOD IMMEDIATELY PRECEDING FEBRUARY 18, 1972, THE EMPLOYERS FOUND BY THE BOARD TO BE EMPLOYERS WITHIN THE MEANING OF SECTION 115(1) (A) OF THE ACT EMPLOYED A TOTAL OF THREE HUNDRED AND NINETY-EIGHT EMPLOYEES. THE BOARD IS OF THE OPINION THAT THE WEEKLY PAYROLL PERIOD IMMEDIATELY PRECEDING FEBRUARY 18, 1972, IS A SATISFACTORY PAYROLL PERIOD FOR THE PURPOSES OF MAKING THE DETERMINATION REQUIRED IN SECTION 115(1)(c). ACCORDINGLY, THE BOARD FINDS THAT THERE WERE THREE HUNDRED AND NINETY-EIGHT EMPLOYEES AFFECTED BY THE APPLICATION. THE THREE HUNDRED AND NINETY-EIGHT EMPLOYEES IS THE NUMBER OF EMPLOYEES TO BE ASCERTAINED BY THE BOARD UNDER SECTION 115(1)(c) OF THE ACT.

12. THE BOARD FURTHER FINDS THAT THE TWENTY EMPLOYERS REPRESENTED BY THE APPLICANT EMPLOYERS' ORGANIZATION EMPLOYED A TOTAL OF THREE HUNDRED AND FORTY-SIX EMPLOYEES DURING THAT WEEKLY PAYROLL PERIOD. THE BOARD IS THEREFORE SATISFIED THAT THE MAJORITY OF EMPLOYERS REPRESENTED BY THE APPLICANT EMPLOYED A MAJORITY OF EMPLOYEES AS ASCERTAINED IN ACCORDANCE WITH THE PROVISIONS OF SECTION 115(1)(c) OF THE ACT.

13. HAVING REGARD TO ALL THE ABOVE FINDINGS A CERTIFICATE OF ACCREDITATION WILL ISSUE TO THE APPLICANT FOR THE UNIT OF EMPLOYERS FOUND TO BE THE APPROPRIATE UNIT OF EMPLOYERS IN PARAGRAPH 5 AND IN ACCORDANCE WITH THE PROVISIONS OF SECTION 115(2) OF THE ACT FOR SUCH OTHER EMPLOYERS FOR WHOSE EMPLOYEES THE RESPONDENT MAY AFTER FEBRUARY 18, 1972, OBTAIN BARGAINING RIGHTS THROUGH CERTIFICATION OR VOLUNTARY RECOGNITION IN THE GEOGRAPHIC AREA AND SECTORS SET OUT IN THE APPROPRIATE UNIT OF EMPLOYERS.

1728-71-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) v. McMASTER UNIVERSITY (RESPONDENT) v. SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 532 (INTERVENER).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND O. HODGES.

APPEARANCES AT THE HEARING: S. T. GOUDGE AND KEITH GILBERT FOR THE APPLICANT; COLIN MORLEY, C.H.M. VINNELS, E. JANZEN AND A. LAWRENCE FOR THE RESPONDENT; NO ONE FOR THE INTERVENER.

DECISION OF THE BOARD:

FEBRUARY 19, 1973.

1. THIS IS AN APPLICATION FOR CERTIFICATION WHEREIN THE APPLICANT SEEKS TO REPRESENT "ALL NON-PROFESSIONAL LIBRARY EMPLOYEES OF THE RESPON-



DENT IN HAMILTON" WITH CERTAIN EXCEPTIONS NOT HERE RELEVANT. THE RESPONDENT TAKES THE POSITION THAT THE APPROPRIATE BARGAINING UNIT OUGHT TO INCLUDE "ALL CLERICAL, TECHNICAL AND OFFICE EMPLOYEES OF THE RESPONDENT". FOLLOWING THE APPOINTMENT OF AN EXAMINER TO INQUIRE INTO THE COMPOSITION OF THE BARGAINING UNIT, THE PARTIES AGREED TO THE FOLLOWING STATEMENT OF FACT. [EDITOR'S NOTE - THE "AGREED STATEMENT OF FACT" COMPRISING 35 PAGES HAS BEEN EDITED FROM THE REPORT.].

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2. A HEARING WAS HELD IN THIS MATTER TO HEAR THE REPRESENTATIONS OF THE PARTIES AS TO THE EFFECT THE BOARD SHOULD GIVE TO THE EVIDENCE CONTAINED IN THE AGREED STATEMENT OF FACT REFERRED TO ABOVE.

3. AT THE HEARING THE APPLICANT TOOK THE POSITION THAT THE BOARD OUGHT TO FIND THAT THE UNIT PROPOSED BY IT IS APPROPRIATE IN VIEW OF THE DECISION OF THE BOARD IN THE CASE OF THE GOVERNORS OF THE UNIVERSITY OF TORONTO, OLRB MONTHLY REPORT, FEBRUARY 1969, P. 1149, WHICH WAS FOLLOWED BY THE BOARD IN THE DECISION OF THE UNIVERSITY OF WESTERN ONTARIO CASE, BOARD FILE NO. 1599-71-R, FOR THE REASONS GIVEN IN ITS DECISION DATED DECEMBER 20, 1972. THE APPLICANT ALSO RELIED ON THE CASES OF THE BOARD OF GOVERNORS RYERSON POLYTECHNICAL INSTITUTE, [1972] JUNE OLRB REP. 651, AND QUEEN'S UNIVERSITY AT KINGSTON, [1970] JUNE OLRB REP. 250, WHEREIN THE PARTIES APPARENTLY AGREED TO A BARGAINING UNIT DESCRIBED IN TERMS SIMILAR TO THOSE PROPOSED BY THE APPLICANT.

4. HAVING CONSIDERED THE EVIDENCE CONTAINED IN THE AGREED STATEMENT OF FACTS AND THE VERY ABLE REPRESENTATIONS OF COUNSEL FOR THE APPLICANT AND THE RESPONDENT WITH RESPECT THERETO, AND HAVING STUDIED WITH INTEREST THE DECISIONS OF THE BOARD IN THE UNIVERSITY OF TORONTO AND THE UNIVERSITY OF WESTERN ONTARIO CASES REFERRED TO ABOVE, WE FIND THAT THE FACTS OF THE INSTANT CASE ARE DISTINGUISHABLE FROM THE FACTS AS REPORTED IN THE DECISIONS SET OUT ABOVE. THE EVIDENCE IN THIS CASE DISCLOSES THAT THE RESPONDENT HAS ADOPTED A JOB CLASSIFICATION PROGRAM WITH SALARY RANGES AND OTHER EMPLOYMENT BENEFITS WHICH ARE COMMON TO ALL THE OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT SO AS TO INTEGRATE THESE EMPLOYEES IN A MANNER WHICH DID NOT APPEAR TO EXIST AT THE UNIVERSITY OF TORONTO AND THE UNIVERSITY OF WESTERN ONTARIO AT THE TIME THE BOARD CERTIFIED THE NON-PROFESSIONAL LIBRARY EMPLOYEES AT THOSE UNIVERSITIES. IN ADDITION, ALTHOUGH THE TEMPORARY INTERCHANGE OF EMPLOYEES BY THE RESPONDENT MAY NOT HAVE REACHED A SUFFICIENT DEGREE SO AS TO CAUSE THAT FACTOR TO BE A SERIOUS IMPEDIMENT TO THE SEVERING OF THE NON-PROFESSIONAL LIBRARY EMPLOYEES FROM OTHER OFFICE EMPLOYEES, IT IS NOTED THAT IN THE YEAR PRECEDING THE APPLICATION IN THIS MATTER TEN EMPLOYEES WERE TRANSFERRED FROM THE LIBRARY TO OTHER DEPARTMENTS OF THE UNIVERSITY. INDEED, AT THE TIME THIS APPLICATION WAS MADE THERE WERE FIFTEEN INSTANCES OF REQUESTS FOR TRANSFER FROM THE LIBRARY TO OTHER UNIVERSITY DEPARTMENTS WHICH WERE AWAITING THE NECESSARY OPENINGS IN ORDER THAT THE REQUESTS FOR TRANSFER COULD BE FULFILLED. WHEN THESE AND OTHER FACTORS WHICH MILITATE AGAINST THE FINDING IN FAVOUR OF A SEPARATE BARGAINING UNIT OF NON-PROFESSIONAL

LIBRARY EMPLOYEES OF THE RESPONDENT ARE CONSIDERED IN LIGHT OF THE BOARD'S OFTEN STATED OPPOSITION TO FRAGMENTATION OF BARGAINING UNITS, WE ARE FORCED TO CONCLUDE THAT THE UNIT PROPOSED BY THE APPLICANT IS NOT APPROPRIATE IN THE INSTANT CASE.

5. EVEN THOUGH THE UNIT PROPOSED BY THE APPLICANT WOULD INCLUDE A RELATIVELY LARGE NUMBER OF PERSONS, THIS FACT IS NOT A COMPELLING FACTOR IN OUR DETERMINATION OF THE APPROPRIATENESS OF THE BARGAINING UNIT. INSOFAR AS NUMBERS ARE CONCERNED, SO LONG AS THE UNIT CONTAINS MORE THAN TWO EMPLOYEES IT MAY BE APPROPRIATE FOR COLLECTIVE BARGAINING PURSUANT TO THE PROVISIONS OF SECTION 1(1)(B) AND SECTION 6(1) OF THE LABOUR RELATIONS ACT. THE APPROPRIATENESS OF THE BARGAINING UNIT ACCORDINGLY CONCERNS MORE THAN MERE NUMBERS. LIKewise, THE APPROPRIATENESS OF THE BARGAINING UNIT MUST BE DETERMINED FROM THE OBJECTIVE FACTS OF THE CASE RATHER THAN THE EXTENT OF ORGANIZATION OF THE APPLICANT UNION. UNDER SECTION 6(1) OF THE LABOUR RELATIONS ACT THE BOARD IS REQUIRED, IN THE EXERCISE OF ITS JURISDICTION, TO DETERMINE THE UNIT OF EMPLOYEES THAT IS APPROPRIATE FOR COLLECTIVE BARGAINING. IT IS NOTED THAT THE DEFINITE ARTICLE "THE" IS USED RATHER THAN A UNIT OF EMPLOYEES THAT IS APPROPRIATE FOR COLLECTIVE BARGAINING.

6. WE ARE NOT HERE CONCERNED WITH A CRAFT UNIT WHICH MIGHT BE DEEMED TO BE APPROPRIATE FOR COLLECTIVE BARGAINING PURSUANT TO THE PROVISIONS OF SECTION 6(2) OF THE ACT. THE UNIT PROPOSED BY THE APPLICANT WOULD NOT MEET THE REQUIREMENTS OF SECTION 6(2) AS A CRAFT BARGAINING UNIT. AGAIN, THE FACT THAT SIMILAR BARGAINING UNITS HAVE BEEN FOUND TO BE APPROPRIATE IN A SPECIFIC CASE WITH OTHER EMPLOYERS IS ALSO NOT DISPOSITIVE OF THE ISSUE. IT MAY WELL BE THAT THE PARTIES IN OTHER CASES HAVE ADJUSTED THEIR AFFAIRS IN ORDER TO GIVE EFFECT TO THE PURPOSES OF THE LABOUR RELATIONS ACT AS SET OUT IN THE PREAMBLE TO THE ACT. IN THE EXERCISE OF ITS JURISDICTION THE BOARD OUGHT TO ATTEMPT TO AVOID CAUSING THE PARTIES AND THE EMPLOYEES CONCERNED TO READJUST THEIR RELATIONSHIP IN A VERY RADICAL WAY IN ORDER TO GIVE EFFECT TO THE BOARD'S DETERMINATION CONCERNING THE APPROPRIATENESS OF A BARGAINING UNIT.

7. IN THIS CASE, AS CAN BE SEEN FROM THE EVIDENCE, THE EMPLOYEES IN THE UNIT PROPOSED BY THE APPLICANT MIGHT HAVE TO GIVE UP THEIR RIGHT TO APPLY FOR TRANSFER TO OTHER VACANT POSITIONS WHICH MIGHT OCCUR IN OTHER DEPARTMENTS OF THE UNIVERSITY ESPECIALLY IF THE OTHER DEPARTMENTS ARE SUBSEQUENTLY REPRESENTED BY A TRADE UNION. IT MIGHT WELL BE THAT TO TRANSFER FROM ONE BARGAINING UNIT TO ANOTHER AN EMPLOYEE WOULD HAVE TO SACRIFICE HIS ACCUMULATED SENIORITY. HOWEVER, IF ALL THE OFFICE, CLERICAL AND TECHNICAL EMPLOYEES ARE INCLUDED IN ONE BARGAINING UNIT EFFECT CAN BE GIVEN TO THE SENIORITY OF AN EMPLOYEE IN THE EVENT OF JOB TRANSFER.

8. IT IS ALSO NOTED THAT NON-PROFESSIONAL LIBRARY EMPLOYEES ARE NOT THE ONLY EMPLOYEES WHO "DEAL WITH BOOKS". OTHER DEPARTMENTS OF THE UNIVERSITY HAVE THEIR OWN LIBRARIES, ALBEIT MUCH SMALLER THAN THE LI-

BRARIES WITH WHICH WE ARE HERE CONCERNED, AND EMPLOYEES MUST EXERCISE SOME OF THE SKILLS WHICH ARE COMMONLY EXERCISED BY LIBRARY ASSISTANTS. IN ADDITION, THE CAMPUS BOOKSTORE ALSO HAS EMPLOYEES WHO MUST EXERCISE SIMILAR SKILLS. APART FROM THE LIBRARY ASSISTANTS THERE ARE 131 EMPLOYEES IN THE RESPONDENT'S THREE LIBRARIES WHOM THE APPLICANT SEEKS TO REPRESENT WHO OCCUPY THE CLASSIFICATIONS OF EITHER CLERK, CLERK-TYPIST OR SECRETARY. THESE CLASSIFICATIONS ARE COMMON TO MOST, IF NOT ALL, THE DEPARTMENTS OF THE RESPONDENT UNIVERSITY. WHILE IT IS TRUE THAT THE CLASSIFICATION OF LIBRARY ASSISTANT IS UNIQUE TO THE THREE LIBRARIES OPERATED BY THE RESPONDENT, THERE ARE OTHER CLASSIFICATIONS IN THE UNIVERSITY SUCH AS NURSES AND DEMONSTRATORS WHICH ARE UNIQUE TO SPECIFIC DEPARTMENTS OF THE UNIVERSITY. ACCORDINGLY, IF THE BOARD WERE TO FIND THAT THE NON-PROFESSIONAL LIBRARY EMPLOYEES OF THE RESPONDENT ARE APPROPRIATE FOR COLLECTIVE BARGAINING IN THE INSTANT CASE, WE CAN SEE NO VALID REASON FOR NOT FINDING THAT THE OFFICE EMPLOYEES OF INDIVIDUAL DEPARTMENTS OR PERHAPS GROUPS OF DEPARTMENTS OF THE RESPONDENT WOULD NOT LIKEWISE BE APPROPRIATE FOR COLLECTIVE BARGAINING. SUCH FRAGMENTATION WOULD BE CONTRARY TO THE BOARD'S USUAL PRACTICE AND INDEED CONTRARY TO THE CONCERN EXPRESSED BY THE BOARD IN BOTH THE UNIVERSITY OF TORONTO CASE AND THE UNIVERSITY OF WESTERN ONTARIO CASE REFERRED TO ABOVE.

9. IN DETERMINING THE APPROPRIATENESS OF THE BARGAINING UNIT, THE BOARD MUST CONSIDER ALL THE FACTS OF EACH CASE IN LIGHT OF THE INTERESTS OF THE UNION, THE EMPLOYER AND ALSO THE EMPLOYEES CONCERNED. IN THE INSTANT CASE, A SEPARATE BARGAINING UNIT FOR THE NON-PROFESSIONAL LIBRARY EMPLOYEES OF THE RESPONDENT WOULD ADVERSELY AFFECT ALL OF THE STEPS TAKEN BY THE RESPONDENT TO INTEGRATE AND ADMINISTER A COMMON POLICY FOR THE OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE UNIVERSITY AS A WHOLE. IN ADDITION, FOR THE REASONS SET OUT ABOVE, A SEPARATE BARGAINING UNIT FOR THE LIBRARY EMPLOYEES MAY WELL ADVERSELY AFFECT THE MOBILITY OF THE EMPLOYEES WITHIN THE UNIVERSITY.

10. THE APPLICANT URGED THE BOARD TO GIVE EFFECT TO ITS INTERPRETATION OF SECTION 3 OF THE LABOUR RELATIONS ACT WHICH PROVIDES THAT EVERY PERSON IS FREE TO JOIN A TRADE UNION OF HIS OWN CHOICE AND TO PARTICIPATE IN ITS LAWFUL ACTIVITIES. OUR FINDING THAT THE UNIT PROPOSED BY THE APPLICANT IS INAPPROPRIATE IN NO WAY DETRACTS FROM THE PURPOSE AND INTENT OF SECTION 3 OF THE ACT. ALL OF THE EMPLOYEES OF THE RESPONDENT WHO HAVE JOINED THE APPLICANT UNION CAN CONTINUE MEMBERSHIP IN THE APPLICANT AND PARTICIPATE IN THE APPLICANT'S ACTIVITIES. HOWEVER THAT MAY BE, UNTIL SUCH TIME AS THE APPLICANT ESTABLISHES THAT IT REPRESENTS THE REQUIRED PERCENTAGE OF THE EMPLOYEES IN THE APPROPRIATE BARGAINING UNIT, THE APPLICANT IS NOT ENTITLED TO BE CERTIFIED TO REPRESENT THE EMPLOYEES OF THE RESPONDENT WHO HAVE MEMBERS OF THE APPLICANT. IF THE APPLICANT'S ARGUMENT WAS CARRIED TO ITS LOGICAL CONCLUSION, A TRADE UNION WOULD BE ENTITLED TO REPRESENT, FOR COLLECTIVE BARGAINING PURPOSES, EVERY EMPLOYEE WHO BECAME A MEMBER OF THE TRADE UNION WITHOUT REGARD TO THE APPROPRIATENESS OF THE BARGAINING UNIT. THIS IS NOT THE INTENT OF SECTION 3 OF THE ACT. IN ORDER TO BE CERTI-



FIED AS BARGAINING AGENT FOR A UNIT OF EMPLOYEES, THE APPLICANT MUST REPRESENT A MAJORITY OF THE EMPLOYEES IN THE APPROPRIATE BARGAINING UNIT IN ACCORDANCE WITH THE PROVISIONS OF SECTION 7 OF THE ACT.

11. WHILE THERE MAY BE EVIDENCE IN THE INSTANT WHICH IS SIMILAR TO THE EVIDENCE WITH WHICH THE BOARD WAS CONCERNED IN THE UNIVERSITY OF TORONTO AND THE UNIVERSITY OF WESTERN ONTARIO CASES, WHEN ALL THE EVIDENCE OF THE INSTANT CASE IS GIVEN EFFECT TO, WE FIND THAT THE NON-PROFESSIONAL LIBRARY EMPLOYEES DO NOT CONSTITUTE A FUNCTIONAL AND INDEPENDENT ENTITY WHICH WOULD CAUSE US TO FIND THAT THEY FORM AN APPROPRIATE BARGAINING UNIT. EVEN IF A UNIT OF LIBRARY EMPLOYEES WERE FOUND TO BE APPROPRIATE, WE ARE OF THE VIEW THAT THERE ARE OTHER LIBRARY EMPLOYEES, APART FROM THE "NON-PROFESSIONAL LIBRARY EMPLOYEES", WHO WOULD BE ELIGIBLE FOR INCLUSION IN THE APPROPRIATE BARGAINING UNIT. WE ARE NOT SATISFIED ON THE EVIDENCE OF THE INSTANT CASE THAT ALL OF THE PERSONS WHO MAY BE REFERRED TO AS "PROFESSIONAL" LIBRARY EMPLOYEES EXERCISE MANAGERIAL FUNCTIONS OR ARE OTHERWISE EXCLUDED FROM AN APPROPRIATE BARGAINING UNIT, PURSUANT TO THE PROVISIONS OF SECTION 1(3) OF THE ACT.

12. FOR THE FOREGOING REASONS, WE FIND THAT WE ARE UNABLE TO GIVE EFFECT TO THE REASONING IN THE UNIVERSITY OF WESTERN ONTARIO CASE IN LIGHT OF THE FACTS IN THE INSTANT CASE. WE ACCORDINGLY FIND THAT THE UNIT PROPOSED BY THE APPLICANT IS INAPPROPRIATE FOR COLLECTIVE BARGAINING.

13. WE FURTHER FIND THAT LESS THAN THIRTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN ANY UNIT WHICH THE BOARD MIGHT DEEM TO BE APPROPRIATE WERE MEMBERS OF THE APPLICANT AT THE TIME THIS APPLICATION WAS MADE.

14. THIS APPLICATION IS ACCORDINGLY DISMISSED.

15. THE BOARD ACCORDINGLY DIRECTS THE REGISTRAR TO CAUSE ALL THE BALLOTS CAST IN THE PRE-HEARING REPRESENTATION VOTE IN THIS MATTER TO BE DESTROYED FOLLOWING THE EXPIRATION OF 30 DAYS FROM THE DATE OF THIS DECISION UNLESS A STATEMENT REQUESTING THAT THE BALLOTS SHOULD NOT BE DESTROYED IS RECEIVED BY THE BOARD FROM ONE OF THE PARTIES BEFORE THE EXPIRATION OF SUCH 30 DAY PERIOD.

46-72-PH: CANADIAN UNION OF GENERAL EMPLOYEES (APPLICANT) v. THE TORONTO WESTERN HOSPITAL (RESPONDENT).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS H.J.F. ADE AND A. MAIN.

APPEARANCES AT THE HEARING: PATRICK MURPHY, JOYCE COMBATLEY AND C. D. JONES FOR THE APPLICANT; R. B. POTTER, D. S. AFFLECK AND R. H. BULGIN FOR THE RESPONDENT.

## DECISION OF THE BOARD:

FEBRUARY 22, 1973.

1. THIS IS AN APPLICATION FOR A DECLARATION THAT A LOCKOUT CALLED OR AUTHORIZED BY THE RESPONDENT IS UNLAWFUL. AT THE INITIAL HEARING OF THIS MATTER ON OCTOBER 17, 1972, THE BOARD, UPON HEARING THE SUBMISSIONS OF THE PARTIES AND TAKING INTO ACCOUNT THE PRINCIPLES AS SET OUT IN A PREVIOUS DECISION OF THE BOARD DATED JULY 18, 1972, INVOLVING AN APPLICATION FOR A STRIKE DECLARATION (BOARD FILE NO. 2262-72-U) BETWEEN THESE SAME PARTIES, RULED TO AMEND THE INSTANT APPLICATION AND TO TREAT IT AS ONE INTENDED TO BE BROUGHT UNDER BOTH THE LABOUR RELATIONS ACT AND THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT. ACCORDINGLY, IN THE CIRCUMSTANCES, THE BOARD GRANTED AN ADJOURNMENT OF THE PROCEEDINGS AND THE MATTER WAS SET DOWN FOR CONTINUATION OF HEARING ON OCTOBER 25, 1972. SUBSEQUENT HEARINGS WERE HELD BEFORE THE BOARD ON DECEMBER 4 AND 5, 1972, AND JANUARY 22 AND 23, 1973.

2. THE RELEVANT BACKGROUND TO THIS APPLICATION, WE FIND IS AS FOLLOWS: FOLLOWING CERTIFICATION OF THE APPLICANT ON APRIL 27, 1970, NEGOTIATIONS BETWEEN THE PARTIES CULMINATED IN A COLLECTIVE AGREEMENT EFFECTIVE FROM JULY 6, 1970 WITH AN EXPIRY DATE OF JULY 5, 1972. THERE IS NO DISPUTE THAT THE APPLICANT IS A "HOSPITAL" WITHIN THE MEANING OF SECTION 1(1)(A) OF THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT AND THAT THE EMPLOYEES IN THE BARGAINING UNIT, AS DEFINED IN THE SAID COLLECTIVE AGREEMENT, ARE "HOSPITAL EMPLOYEES" WITHIN THE MEANING OF SECTION 1(1)(B) OF THE SAID ACT. BY LETTER DATED MAY 8, 1972, THE APPLICANT SERVED NOTICE UPON THE RESPONDENT OF ITS DESIRE TO AMEND THE SAID COLLECTIVE AGREEMENT. IN RESPONSE TO THE RESPONDENT'S REQUEST, IN ITS LETTER TO THE APPLICANT DATED MAY 10, 1972, A PROPOSED DRAFT COLLECTIVE AGREEMENT WAS FORWARDED BY THE APPLICANT AND THE FIRST MEETING OF THE PARTIES IN THIS REGARD WAS HELD ON MAY 18, 1972. NEGOTIATIONS HOWEVER PROVED ABORTIVE AT THIS TIME AND BY NOTICE DATED MAY 18, 1972, THE RESPONDENT ADVISED ITS EMPLOYEES AS FOLLOWS:

"MEMORANDUM TO ALL EMPLOYEES:RE: UNION NEGOTIATIONS

AT 1.40 P.M. TODAY THE HOSPITAL AND THE  
CANADIAN UNION OF GENERAL EMPLOYEES MET TO  
COMMENCE NEGOTIATIONS FOR A NEW COLLECTIVE  
AGREEMENT. IN ACCORDANCE WITH ITS RIGHT TO  
DO SO, THE HOSPITAL REQUESTED THE UNION TO  
EXPLAIN AND JUSTIFY ITS RATHER EXTREME REQUESTS.  
THIS THE UNION REFUSED TO DO AND WALKED OUT OF

THE MEETING, STATING THAT AN APPLICATION WOULD BE MADE FOR THE SERVICES OF A CONCILIATION OFFICER.

FOR THE PAST EIGHTEEN YEARS YOUR HOSPITAL HAS ALWAYS NEGOTIATED IN GOOD FAITH WITH ITS EMPLOYEES. WE INTEND TO CONTINUE TO DO SO BUT FIND IT IMPOSSIBLE WHEN THE UNION'S REPRESENTATIVES WALK OUT."

ON JUNE 1, 1972, THE APPLICANT APPLIED TO THE DEPUTY MINISTER OF LABOUR FOR THE SERVICES OF A CONCILIATION OFFICER, WHICH WAS GRANTED ON JUNE 14, 1972. COMMENCING JULY 4, 1972, A SERIES OF MEETINGS WITH THE PARTIES WERE CONVENED BY THE CONCILIATION BRANCH OF THE DEPARTMENT OF LABOUR. BY LETTER DATED JULY 13, 1972, THE PARTIES WERE ADVISED THAT THE MINISTER HAD DECIDED NOT TO APPOINT A CONCILIATION BOARD IN REFERENCE TO THE DISPUTE.

3. THE EVIDENCE OF JAMES MCAULEY, EXECUTIVE DIRECTOR AND THE CHIEF ADMINISTRATOR OF THE RESPONDENT, RESPONSIBLE FOR THE DAY TO DAY OPERATION OF THE HOSPITAL, IS TO THE EFFECT THAT AS A RESULT OF A TELEPHONE REQUEST MADE TO HIM BY PATRICK MURPHY, THE PRESIDENT OF THE APPLICANT, ANOTHER MEETING OF THE PARTIES WAS HELD ON THE EVENING OF JULY 11, 1972. THIS MEETING, ACCORDING TO THE WITNESS, WAS PREMISED UPON THE UNDERSTANDING THAT THE RESPONDENT WOULD CONTINUE NEGOTIATIONS ONLY UP TO THE TIME OF ANY STRIKE. ACCORDING TO THE WITNESS, HE REMAINED IN HIS OFFICE ALL THAT EVENING AND TOOK NO PART IN THE DISCUSSIONS. AT ABOUT 4:30 THE NEXT MORNING, HE STATED THAT THE RESPONDENT'S PROPOSALS WERE LEFT WITH THE APPLICANT'S NEGOTIATING COMMITTEE FOR CONSIDERATION. HE FURTHER STATED THAT AT ABOUT 5:00 A.M. UPON OBSERVING PICKETS CARRYING PLACARDS FORMING OUTSIDE OF THE HOSPITAL, HE INFORMED GEORGE MILLER, THE APPLICANT'S COUNSEL, THAT NEGOTIATIONS WOULD BE DISCONTINUED. ACCORDING TO THE WITNESS, THIS DISCUSSION TOOK PLACE IN THE HALL OUTSIDE OF THE NEGOTIATION ROOM AFTER MR. MILLER HAD ACCOMPANIED HIM TO THE WINDOW. HE FURTHER OBSERVED THAT THE APPLICANT'S NEGOTIATING COMMITTEE WERE NOT IN THE NEGOTIATION ROOM AT THIS TIME. MR. MILLER'S EVIDENCE IN THIS REGARD IS TO THE EFFECT THAT HE REVIEWED THE RESPONDENT'S PROPOSALS WITH THE NEGOTIATING COMMITTEE UNTIL APPROXIMATELY 4:00 A.M. HE THEN LEFT THE NEGOTIATING ROOM AND PRESENTED MR. MACGOWAN, THE RESPONDENT'S REPRESENTATIVE, WITH A FIVE-POINT WRITTEN PROPOSAL. MR. MILLER FURTHER STATED THAT HE WAS AWARE THAT THE MEMBERSHIP HAD ON JULY 6, 1972, VOTED TO WITHHOLD SERVICES IN THE EVENT PROGRESS WAS NOT MADE BY THE TIME OF THE START OF THE SHIFT AT 5:00 A.M. ON JULY 12, 1972. HAVING CAREFULLY REVIEWED THE TOTALITY OF THE EVIDENCE, WE ARE SATISFIED THAT THE NEGOTIATING COMMITTEE LEFT THE NEGOTIATING ROOM SHORTLY PRIOR TO 5:00 A.M. AT WHICH POINT MR. MACGOWAN'S AUTHORITY TO CONTINUE NEGOTIATIONS WITH MR. MILLER WAS REVOKED BY MR. MCAULEY.



4. MR. MCAULEY FURTHER TESTIFIED THAT APPROXIMATELY 400 EMPLOYEES FAILED TO REPORT FOR WORK ON THE MORNING OF JULY 12, 1972. AS A RESULT, TELEGRAMS WERE DISPATCHED TO THE SHOP STEWARDS AND MEMBERS OF THE NEGOTIATING COMMITTEE ON JULY 15, 1972, ADVISING THEM THAT THEY WERE ENGAGING IN A STRIKE IN VIOLATION OF THE LABOUR RELATIONS ACT AND THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT. WITHOUT PREJUDICE TO ANY FURTHER ACTION TO BE TAKEN AGAINST THEM, THE RESPONDENT ALSO INFORMED THESE INDIVIDUALS THAT THEY WERE SUSPENDED INDEFINITELY PENDING A REVIEW OF THE CIRCUMSTANCES. ON THE SAME DAY, MR. MURPHY, ON BEHALF OF THE APPLICANT SENT A TELEGRAM TO THE RESPONDENT REQUESTING A FURTHER MEETING IN AN ATTEMPT TO NEGOTIATE A COLLECTIVE AGREEMENT. BY TELEGRAM DATED JULY 17, 1972, MR. MCAULEY ON BEHALF OF THE RESPONDENT, REPLIED THAT IT WOULD BE PREPARED TO MEET FORTHWITH PURSUANT TO SECTION 3 OF THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT AS SOON AS THE APPLICANT HAD COMPLIED WITH THE PROVISIONS OF SECTION 8(1) OF THE SAID ACT, SECTION 65 OF THE LABOUR RELATIONS ACT AND ARTICLE 4:01 OF THE COLLECTIVE AGREEMENT. TO THIS, MR. MURPHY REPLIED, BY TELEGRAM DATED JULY 17, 1972, THAT THE APPLICANT WAS STILL PREPARED TO MEET THE RESPONDENT FORTHWITH TO BARGAIN AND THAT NO CONDITIONS WOULD BE IMPOSED. IN ADDITION, MR. MURPHY INDICATED THAT THE APPLICANT WOULD CONTINUE TO OFFER ITS PERSONNEL FOR ESSENTIAL SERVICES. BY TELEGRAM DATED JULY 18, 1972, THE RESPONDENT REPEATED ITS POSITION TO THE APPLICANT, AS EXPRESSED IN ITS TELEGRAM TO THE APPLICANT DATED JULY 17, 1972. HOWEVER, BY TELEGRAM DATED JULY 21, 1972, MR. MCAULEY INFORMED THE APPLICANT THAT THE RESPONDENT WAS NOW PREPARED TO EXTEND THE COMPULSORY ARBITRATION PROVISION AS SET OUT IN SECTION 4 OF THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT, FOR A FURTHER PERIOD OF 7 DAYS. IN THIS REGARD, MR. MCAULEY TESTIFIED THAT THE "NO BOARD" REPORT WAS MAILED ON JULY 13, 1972, WHICH PURSUANT TO THE RELEVANT LEGISLATION WAS DEEMED TO BE RELEASED ON JULY 15, 1972. AS SECTION 4(1) PROVIDED FOR A MANDATORY 7 DAY WAITING PERIOD IN THE EVENT THAT NO COLLECTIVE AGREEMENT WAS SUBSEQUENTLY AGREED UPON, HE MADE THE OFFER ON JULY 21, 1972, A DAY PRIOR TO THE TERMINATION OF THE COMPULSORY WAITING PERIOD. PURSUANT TO A TELEGRAM DATED JULY 22, 1972, THE APPLICANT AGREED TO THE EXTENSION. ALTHOUGH SOME PROGRESS WAS MADE DURING FURTHER MEETINGS HELD ON JULY 31, AUGUST 1 AND AUGUST 4, 1972, BETWEEN THE REPRESENTATIVES OF THE PARTIES, IT IS CLEAR, HAVING REGARD TO THE TOTALITY OF THE EVIDENCE, THAT THE MAJOR STUMBLING BLOCK TO SUCCESSFULLY CONCLUDING A COLLECTIVE AGREEMENT AT THIS POINT, WAS THE QUESTION OF THE REINSTATEMENT OF THE DISMISSED SHOP STEWARDS AND MEMBERS OF THE NEGOTIATING COMMITTEE.

5. MR. MCAULEY FURTHER TESTIFIED THAT ON JULY 24, 1972, (THE SAME DATE AS APPEARS ON THE FINAL DECISION OF THE BOARD WHICH GRANTED THE STRIKE DECLARATIONS IN BOARD FILE NO. 2262-72-U, NOW CITED AS [1972] OLRB REP. 731), HE CAUSED A LETTER TO BE SENT TO APPROXIMATELY 400 OF THE HOSPITAL EMPLOYEES. THESE EMPLOYEES WHO WERE NOT SHOP STEWARDS OR MEMBERS OF THE NEGOTIATING COMMITTEE, WERE ADVISED AS FOLLOWS:

"YOU HAVE NOW BEEN ON STRIKE AGAINST THE  
HOSPITAL SINCE THE MORNING OF JULY 12TH, 1972.  
THIS STRIKE HAS BEEN DECLARED UNLAWFUL BY THE

ONTARIO LABOUR RELATIONS BOARD. THIS MEANS YOU ARE CONTRAVENING THE LAW AND THE "NO STRIKE" PROVISIONS OF THE COLLECTIVE AGREEMENT.

YOU ARE HEREBY DIRECTED TO REPORT FOR WORK NOT LATER THAN WEDNESDAY JULY 26TH, 1972, ON THE REGULAR SHIFT YOU WOULD NORMALLY HAVE BEEN WORKING. IF YOU DO NOT KNOW YOUR SCHEDULED SHIFT, YOU CAN EITHER TELEPHONE YOUR SUPERVISOR OR COME TO THE HOSPITAL TO FIND OUT.

YOUR FAILURE TO REPORT FOR WORK AS DIRECTED ABOVE WILL LEAVE THE HOSPITAL NO ALTERNATIVE BUT TO CONSIDER YOUR IMMEDIATE DISMISSAL FROM THE EMPLOY OF THE HOSPITAL.

IT IS UP TO YOU AND NOBODY ELSE TO MAKE THIS DECISION.

IF YOU DECIDE TO RETURN TO WORK, NO SUSPENSION OR DISMISSAL ACTION WILL BE TAKEN AGAINST YOU BY THE HOSPITAL SO LONG AS YOU CARRY OUT YOUR DUTIES IN A NORMAL FASHION."

6. BY LETTER DATED JULY 25, 1972, MR. MCAULEY ADVISED THE SHOP STEWARDS AND MEMBERS OF THE NEGOTIATING COMMITTEE AS FOLLOWS:

"THE ONTARIO LABOUR RELATIONS BOARD HAS NOW RULED THAT CERTAIN EMPLOYEES OF THE HOSPITAL HAVE ENGAGED IN AN UNLAWFUL STRIKE AND THAT THE CANADIAN UNION OF GENERAL EMPLOYEES AUTHORIZED THAT UNLAWFUL STRIKE. BECAUSE YOU HAVE A SPECIAL RESPONSIBILITY IN THIS MATTER AS A STEWARD AND MEMBER OF THE NEGOTIATING COMMITTEE OF THE CANADIAN UNION OF GENERAL EMPLOYEES, WE AGAIN ASK YOU TO TAKE PROMPT AND EFFECTIVE MEASURES TO OBTAIN THE RETURN TO WORK OF YOUR FELLOW EMPLOYEES IN THE BARGAINING UNIT SO THAT NEGOTIATIONS MAY CONTINUE.

WE REFER TO OUR TELEGRAM TO YOU OF JULY 15TH, 1972, IN WHICH YOU WERE INFORMED OF YOUR SUSPENSION UNTIL A REVIEW OF YOUR CONDUCT HAD BEEN COMPLETED. ANY SUCH REVIEW MAY RESULT IN DISCIPLINARY ACTION AGAINST YOU, WHICH COULD INCLUDE YOUR DISCHARGE AS AN EMPLOYEE OF THE HOSPITAL. HOWEVER, WHEN THIS REVIEW IS MADE, YOUR COMPLIANCE OR LACK OF COMPLIANCE WITH THE ABOVE REQUEST WILL BE TAKEN INTO CONSIDERATION BY THE HOSPITAL. PENDING THE COMPLETION OF SUCH REVIEW YOUR SUSPENSION REMAINS IN EFFECT, BUT IF IN THE MEANTIME NEGOTIATIONS ARE

RESUMED YOU WOULD, OF COURSE, BE ENTITLED TO PARTICIPATE IN SUCH NEGOTIATIONS.

ANY STEPS TAKEN AS OUTLINED ABOVE ARE WITHOUT PREJUDICE TO THE HOSPITAL'S RIGHT TO PROCEED TO OBTAIN THE CONSENT OF THE ONTARIO LABOUR RELATIONS BOARD TO INSTITUTE A PROSECUTION FOR ONE OR MORE OFFENCES BY YOU UNDER EITHER OR BOTH OF THE LABOUR RELATIONS ACT AND THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT, (BOARD FILE NO. 2276-72-U)."

7. THE EVIDENCE FURTHER DISCLOSES THAT THE TELEGRAMS DISPATCHED BY MR. MCAULEY ON JULY 15, 1972, WHICH INITIALLY PLACED THE SHOP STEWARDS AND MEMBERS OF THE NEGOTIATING COMMITTEE UNDER AN INDEFINITE SUSPENSION, WERE READ AND TRANSLATED AT AN OPEN MEETING OF THE MEMBERSHIP HELD LATER THAT DAY. FOLLOWING RECEIPT OF MR. MCAULEY'S LETTERS OF DISMISSAL DATED JULY 24, AND JULY 25, 1972, A FURTHER MEMBERSHIP MEETING WAS HELD. ON BOTH OCCASIONS, A MOTION WAS PASSED BY THE MEMBERSHIP TO THE EFFECT THAT NO MEMBER WOULD RETURN TO WORK UNLESS THE SHOP STEWARDS AND MEMBERS OF THE NEGOTIATING COMMITTEE WERE REINSTATED. WE ARE SATISFIED HAVING REGARD TO THE TOTALITY OF THE EVIDENCE ADDUCED IN THIS REGARD, THAT THE MEMBERSHIP WERE MADE AWARE OF THEIR ILLEGAL ACTIVITIES IN THIS REGARD AND THAT THE UNION LEADERS, NAMELY MR. MURPHY AND MR. CYRIL JONES, THE GENERAL VICE-PRESIDENT OF THE APPLICANT, TOOK NO ACTIVE STEPS TO DIS-SUADE THEM IN THIS REGARD. INDEED, AS REGARDS MR. MURPHY, THE EVIDENCE IS JUST TO THE CONTRARY, IN THAT HE IN FACT ENCOURAGED THE MEMBERSHIP IN ITS UNLAWFUL PURSUITS.

8. BY LETTER DATED JULY 27, 1972, 317 OF THE HOSPITAL EMPLOYEES WERE FURTHER ADVISED BY MR. MCAULEY AS FOLLOWS:

"ON JULY 24, 1972, YOU WERE NOTIFIED BY REGISTERED MAIL THAT YOU WERE ABSENT FROM WORK ON AN UNLAWFUL STRIKE AND THAT UNLESS YOU RETURNED TO WORK BY JULY 26, 1972, THE HOSPITAL WOULD CONSIDER YOUR IMMEDIATE DISCHARGE FROM EMPLOYMENT.

AS YOU HAVE NOT OBSERVED THE DIRECTIVE OF THE HOSPITAL TO RETURN TO WORK, YOU ARE HEREBY ADVISED THAT EFFECTIVE 12.00 O'CLOCK NOON ON JULY 27, 1972, YOU HAVE BEEN DISMISSED FROM THE EMPLOY OF THE TORONTO WESTERN HOSPITAL FOR CAUSE.

ALL DOCUMENTS NECESSARY FOR YOUR SEVERANCE FROM EMPLOYMENT AND ANY AMOUNTS OWING TO YOU WILL BE FORWARDED BY MAIL TO YOU AS SOON AS POSSIBLE.

IF YOU HAVE PERSONAL BELONGINGS IN A LOCKER AT THE HOSPITAL, YOU MAY ARRANGE THROUGH THE PERSONNEL DEPARTMENT FOR A MUTUALLY CONVENIENT TIME TO PICK UP THESE BELONGINGS."



9. BY LETTER DATED JULY 27, 1972, THE SHOP STEWARDS AND MEMBERS OF THE NEGOTIATING COMMITTEE, WERE ADVISED BY MR. MCAULEY AS FOLLOWS:

"ON JULY 25, 1972, THE HOSPITAL REQUESTED YOU BY REGISTERED MAIL TO TAKE PROMPT AND EFFECTIVE MEASURES TO OBTAIN THE RETURN TO WORK OF YOUR FELLOW EMPLOYEES IN THE BARGAINING UNIT. WE HAVE NO EVIDENCE THAT YOU HAVE TAKEN ANY EFFECTIVE MEASURES TO COMPLY WITH THIS REQUEST. THE HOSPITAL HAS NOW REVIEWED YOUR CONDUCT SINCE THE 12TH DAY OF JULY 1972.

YOU ARE HEREBY ADVISED THAT EFFECTIVE 12.00 NOON, THE 27TH DAY OF JULY, 1972, YOU HAVE BEEN DISMISSED FROM THE EMPLOY OF THE TORONTO WESTERN HOSPITAL FOR CAUSE.

ALL DOCUMENTS NECESSARY FOR YOUR SEVERANCE FROM EMPLOYMENT AND ANY AMOUNTS OWING TO YOU WILL BE FORWARDED TO YOU BY MAIL AS SOON AS POSSIBLE.

IF YOU HAVE PERSONAL BELONGINGS IN A LOCKER AT THE HOSPITAL, YOU MAY ARRANGE THROUGH THE PERSONNEL DEPARTMENT FOR A MUTUALLY CONVENIENT TIME TO PICK UP THESE BELONGINGS."

10. THE ISSUE TO BE NOW RESOLVED BY THIS BOARD IS TO DETERMINE WHETHER THE RESPONDENT ENGAGED IN AN UNLAWFUL LOCK-OUT, HAVING REGARD TO THE TOTALITY OF ITS ACTIONS WHICH CULMINATED IN THE DISMISSAL ON JULY 27, 1972, OF THE AFOREMENTIONED EMPLOYEES. APPLYING ANALOGOUS REASONING IN THE CASE OF AN APPLICATION FOR A LOCK-OUT DECLARATION, AS SET OUT BY THE PANEL OF THE BOARD IN ITS DECISION DATED JULY 24, 1972 (BOARD FILE NO. 2262-72-U, SUPRA), WHICH DEALT WITH AN APPLICATION FOR A STRIKE DECLARATION, WE SHARE THE DOUBTS AS EXPRESSED BY THAT PANEL AS TO WHETHER AN APPLICATION INVOLVING HOSPITAL EMPLOYEES CAN BE BROUGHT UNDER THE LABOUR RELATIONS ACT. ACCORDINGLY, WE SHALL DEAL WITH THIS APPLICATION AS ONE BROUGHT UNDER THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT, KEEPING IN MIND THE SPECIFIC PROVISIONS OF SECTION 2(2) OF THAT ACT.

11. A LOCK-OUT IS DEFINED IN SECTION 1(1)(1) OF THE LABOUR RELATIONS ACT AS FOLLOWS:

"LOCK-OUT" INCLUDES THE CLOSING OF A PLACE OF EMPLOYMENT, A SUSPENSION OF WORK OR A REFUSAL BY AN EMPLOYER TO CONTINUE TO EMPLOY A NUMBER OF HIS EMPLOYEES, WITH A VIEW TO COMPEL OR INDUCE HIS EMPLOYEES, OR TO AID ANOTHER EMPLOYER TO COMPEL OR INDUCE HIS EMPLOYEES, TO REFRAIN FROM EXERCISING ANY RIGHTS OR PRIVILEGES UNDER THIS

ACT OR TO AGREE TO PROVISIONS OR CHANGES IN PROVISIONS RESPECTING TERMS OR CONDITIONS OF EMPLOYMENT OR THE RIGHTS, PRIVILEGES OR DUTIES OF THE EMPLOYER, AN EMPLOYERS' ORGANIZATION, THE TRADE UNION, OR THE EMPLOYEES;"

SECTION 8 OF THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT, PROVIDES:

"8.--(1) NOTWITHSTANDING ANYTHING IN THE LABOUR RELATIONS ACT, NO HOSPITAL EMPLOYEES TO WHOM THIS ACT APPLIES SHALL STRIKE AND NO EMPLOYER OF SUCH EMPLOYEES SHALL LOCK THEM OUT.

(2) NOTHING IN THIS SECTION PROHIBITS ANY SUSPENSION OR DISCONTINUATION FOR CAUSE OF THE OPERATIONS OF A HOSPITAL OR THE QUITTING OF EMPLOYMENT FOR CAUSE IF THE SUSPENSION, DISCONTINUATION OR QUITTING DOES NOT CONSTITUTE A LOCK-OUT OR STRIKE.

(3) SECTIONS 65, 66, 82 AND 83 OF THE LABOUR RELATIONS ACT APPLY MUTATIS MUTANDIS TO A STRIKE OF HOSPITAL EMPLOYEES TO WHOM THIS ACT APPLIES OR TO A LOCK-OUT BY THEIR EMPLOYERS."

12. THIS DEFINITION OF LOCK-OUT WAS SCRUTINIZED BY THE BOARD IN THE S. McNALLY & SONS, LIMITED CASE, JULY [1971] OLRB M.R. 430 WHERE AT PAGE 432, IT IS STATED:

"...A LOCKOUT, ACCORDING TO THE DEFINITION, COMPRISES TWO ELEMENTS. THE FIRST OF THESE IS A CLOSING OF THE PLACE OF EMPLOYMENT OR A SUSPENSION OF WORK OR A REFUSAL TO CONTINUE TO EMPLOY A NUMBER OF EMPLOYEES. THE SECOND ELEMENT QUALIFIES THE FIRST, BUT IS NEVERTHELESS AN ESSENTIAL INGREDIENT OF THE DEFINITION. IT STATES THAT, IN A LOCKOUT, THE FOREGOING ACTIONS OF AN EMPLOYER ARE DONE "WITH A VIEW TO COMPEL OR INDUCE HIS EMPLOYEES, TO REFRAIN FROM EXERCISING ANY RIGHTS OR PRIVILEGES UNDER THIS ACT OR TO AGREE TO PROVISIONS OR CHANGES IN PROVISIONS ETC." BOTH ELEMENTS MUST BE PRESENT BEFORE A LOCKOUT CAN BE SAID TO HAVE TAKEN PLACE."

13. THERE CAN BE NO QUESTION THAT IN THE INSTANT CASE, THE RESPONDENT DID REFUSE TO CONTINUE TO EMPLOY A NUMBER OF ITS EMPLOYEES AS ABOVE DESCRIBED, AND THAT THEREFORE ITS ACTIVITIES IN THIS REGARD SATISFIES

THE FIRST ELEMENT OF THE DEFINITION. HOWEVER, THERE IS NO EVIDENCE THAT THE RESPONDENT'S ACTIVITIES IN THIS REGARD WERE PERFORMED WITH A VIEW TO COMPEL OR INDUCE THESE EMPLOYEES TO REFRAIN FROM EXERCISING RIGHTS AND PRIVILEGES EITHER UNDER THE LABOUR RELATIONS ACT OR UNDER THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT. ON THE CONTRARY, WE FIND THAT THE RESPONDENT ACTED IN GOOD FAITH IN ADVISING THE HOSPITAL EMPLOYEES OF THE STRIKE DECLARATION AS INDICATED IN PARAGRAPH #5 HEREIN AND GIVING THEM, IN THE FACE OF THAT DECLARATION, AN OPPORTUNITY TO RETURN TO WORK. THE EVIDENCE FURTHER DISCLOSES THAT SOME OF THESE EMPLOYEES DID IN FACT RETURN TO THEIR JOBS AND THESE EMPLOYEES WERE REINSTATED. THOSE WHO DID NOT RETURN, WERE DULY WARNED OF THE CONSEQUENCES OF THEIR ACTIONS AND WERE SUBSEQUENTLY DISMISSED. ALTHOUGH THE SHOP STEWARDS AND MEMBERS OF THE SHOP COMMITTEE WERE NEVER GIVEN SUCH AN OPTION, IT IS CLEAR THAT THEY WOULD NEVERTHELESS HAVE BEEN PERMITTED TO PARTICIPATE IN NEGOTIATIONS HAD ANY TAKEN PLACE PRIOR TO JULY 27, 1972, EVEN THOUGH THEY WERE UNDER AN INDEFINITE SUSPENSION AT THAT TIME. IN OUR OPINION, THIS TACTIC ON THE PART OF THE RESPONDENT WAS PROMPTED PRIMARILY BY ITS INTENT TO GET ITS EMPLOYEES, WHO AT THE RELEVANT TIMES WERE ENGAGED IN AN ILLEGAL STRIKE, BACK TO WORK. FAR FROM REQUIRING ITS EMPLOYEES TO REFRAIN FROM EXERCISING THEIR RIGHTS OR PRIVILEGES UNDER THE RELEVANT LEGISLATION, THE RESPONDENT WAS IN EFFECT ENDEAVOURING TO COMPEL THEM TO EXERCISE THEIR COINCIDENTAL DUTIES AND RESPONSIBILITIES. AS REGARDS THE SHOP STEWARDS AND MEMBERS OF THE NEGOTIATING COMMITTEE, IT MUST BE BORNE IN MIND THAT IN THESE PROCEEDINGS WE ARE NOT ASKED TO DETERMINE WHETHER ON THE EVIDENCE THE BOARD WOULD GRANT ITS CONSENT TO THE PROSECUTION OF THE RESPONDENT ON THE BASIS THAT SUCH A TACTIC WOULD CONSTITUTE AN ALLEGED UNFAIR LABOUR PRACTICE. NOR ARE WE ASKED TO DEAL WITH THE ISSUE AS TO WHETHER THESE INDIVIDUALS WERE ULTIMATELY DISCHARGED CONTRARY TO THE RELEVANT LEGISLATION. LIKewise, WE ARE NOT SATISFIED IN THE CIRCUMSTANCES, THAT THE RESPONDENT'S ACTIONS IN THIS MATTER WERE PERFORMED WITH THE INTENT TO COMPEL OR INDUCE THE EMPLOYEES CONCERNED "TO AGREE TO PROVISIONS OR CHANGES IN PROVISIONS ETC.", AS CONTEMPLATED IN THE ALTERNATIVE STATUTORY REQUIREMENTS OF A LOCK-OUT.

14. HAVING CAREFULLY REVIEWED THE TOTALITY OF THE EVIDENCE IN THIS REGARD, WE ARE THEREFORE SATISFIED THAT THE ESSENTIAL INGREDIENTS OF THE SECOND ELEMENT OF THE DEFINITION OF LOCK-OUT HAVE NOT BEEN ESTABLISHED. IN REACHING THIS CONCLUSION, WE HAVE CONSIDERED THE FOLLOWING CASES: CLAUDE ABRAMS COMPANY LIMITED OPERATING AS PUBLIC OPTICAL OLRB M.R. NOVEMBER 1968, P. 842; JAMES HOWDEN AND PARSONS OF CANADA LTD. OLRB M.R. JULY 1969, P. 537; THE ALGOMA STEEL CORPORATION, LIMITED OLRB M.R. SEPTEMBER, 1969, P. 773; DOVER CORPORATION (CANADA) LTD., TURNBULL ELEVATOR DIVISION CASE MAY, [1972] OLRB M.R. P. 540.

15. THIS APPLICATION IS ACCORDINGLY DISMISSED.

3042-72-R: UNITED PAPERWORKERS INTERNATIONAL UNION (APPLICANT) V. DOM-TAR PACKAGING LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).



BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES AND J. E. C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: C. MONK AND GILBERT HAY FOR THE APPLICANT; J. W. HEALY, Q.C., CLAUDE RACINE AND ERIC YOUNG FOR THE RESPONDENT; NO ONE APPEARING FOR THE OBJECTORS.

DECISION OF VICE-CHAIRMAN R.A. FURNESS AND BOARD MEMBER O. HODGES: FEBRUARY 26, 1973.

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2. THE HEARING OF THIS APPLICATION FOR CERTIFICATION WAS HELD IN TORONTO ON JANUARY 11, 1973, COMMENCING AT APPROXIMATELY 9.30 A.M. AT THE COMMENCEMENT OF THE HEARING OF THIS APPLICATION, THE BOARD INQUIRED WHETHER THERE WAS ANYONE APPEARING ON BEHALF OF THE GROUP OF EMPLOYEES. THERE WAS NO INDICATION THAT ANYONE PRESENT IN THE BOARD'S HEARING ROOM APPEARED ON BEHALF OF THE GROUP OF EMPLOYEES.

3. AT THIS POINT, THE BOARD DIRECTED ITS CLERK TO SEARCH THE CORRIDORS AND WAITING AREAS ON THE FLOOR WHERE THE HEARING WAS ABOUT TO BE CONDUCTED. THE CLERK INFORMED THE BOARD THAT HE COULD NOT FIND ANYONE WHO CLAIMED TO REPRESENT THE GROUP OF EMPLOYEES IN THIS APPLICATION.

4. THE BOARD THEN DIRECTED ITS CLERK TO MAKE INQUIRIES WITH THE REGISTRAR OF THE BOARD ON WHETHER THE LATTER HAD RECEIVED ANY WRITTEN OR ORAL COMMUNICATION FROM ANY OF THE EMPLOYEES WHO OBJECTED TO THIS APPLICATION CONCERNING THEIR INABILITY TO ATTEND THE HEARING OR OF THEIR ANTICIPATED LATENESS. THE CLERK MADE THESE INQUIRIES AND INFORMED THE BOARD THAT THE REGISTRAR HAD NOT RECEIVED ANY COMMUNICATION FROM ANY OF THE EMPLOYEES REGARDING THEIR ATTENDANCE AT THE HEARING OF THIS APPLICATION FOR CERTIFICATION. UPON RECEIVING THIS INFORMATION FROM THE CLERK, THE BOARD COMMENCED ITS HEARING OF THIS APPLICATION FOR CERTIFICATION. NEITHER THE APPLICANT NOR THE RESPONDENT RAISED ANY OBJECTION TO THE COMMENCEMENT OF THE HEARING.

5. AT THE CONCLUSION OF THE HEARING AT APPROXIMATELY 10.05 A.M., THE BOARD ANNOUNCED THAT IT WAS RESERVING ITS DECISION ON THE APPLICATION FOR CERTIFICATION. AFTER THIS ANNOUNCEMENT BY THE BOARD, COUNSEL FOR THE RESPONDENT THEN INFORMED THE BOARD THAT TWO EMPLOYEES OF THE RESPONDENT HAD ENTERED THE HEARING ROOM. THE BOARD RECESSED BRIEFLY AND AFTER THE RECESS ANNOUNCED THAT A MAJORITY OF THE BOARD RULED THAT THE HEARING OF THIS APPLICATION FOR CERTIFICATION HAD BEEN CONCLUDED AND THAT THE BOARD WOULD PROCEED TO HEAR THE NEXT CASE ON THE LIST. AT THIS POINT, COUNSEL FOR THE RESPONDENT EXPRESSED AN OBJECTION TO THIS RULING.

6. IN A LETTER TO THE BOARD DATED JANUARY 11, 1973, COUNSEL FOR THE RESPONDENT STATED IN PART:

"I THEREUPON SPOKE TO THE TWO EMPLOYEES REFERRED TO EARLIER AND ASCERTAINED THAT THEY ARE THE PERSONS WHO FILED WITH THE BOARD THE HANDWRITTEN STATEMENTS OF DESIRE REFERRED TO IN THE BOARD'S LETTER OF JANUARY 8TH, 1973. THESE TWO EMPLOYEES HAD DRIVEN FROM KITCHENER, HAD MADE A WRONG TURN AFTER THEY ARRIVED WITHIN THE CITY LIMITS OF TORONTO, HAD BECOME TEMPORARILY LOST, AND AS A RESULT ARRIVED AT THE HEARING SOME 35 MINUTES LATE. ALTHOUGH PRESENT IN THE HEARING ROOM THEY WERE NOT ASKED TO EXPLAIN WHY THEY WERE LATE AND INDEED THEY WERE NOT RECOGNIZED IN ANY WAY BY THE CHAIRMAN.

WHEN THESE TWO EMPLOYEES APPEARED IN THE HEARING ROOM THE CASE HAD NOT BEEN CONCLUDED. THE DECISION HAD BEEN RESERVED. THE DESIRES OF THE TWO EMPLOYEES ARE DIRECTLY PERTINENT ON THE BASIS OF THE CARD COUNT IN DETERMINING THE BOARD'S DECISION. IT IS RESPECTFULLY SUBMITTED THAT THE BOARD SHOULD, TO AVOID A DENIAL OF NATURAL JUSTICE, HEAR THE TWO EMPLOYEES BEFORE RENDERING A DECISION ON THIS APPLICATION FOR CERTIFICATION.

ACCORDINGLY, AND PURSUANT TO SECTION 95 OF THE LABOUR RELATIONS ACT, THIS IS A REQUEST TO THE BOARD FOR RECONSIDERATION OF ITS DECISION TO RESERVE ITS DECISION WITHOUT FIRST HEARING THE REPRESENTATIONS AND ASCERTAINING THE DESIRES OF THE SAID TWO EMPLOYEES OF THE RESPONDENT."

7. IN A LETTER TO THE BOARD DATED JANUARY 22, 1973, THE APPLICANT REQUESTED THAT THE RESPONDENT'S REQUEST FOR RECONSIDERATION BE DENIED AND APPARENTLY STATED THAT THE POSITION TAKEN BY THE APPLICANT WAS INFLUENCED BY THE REPRESENTATIONS MADE AT THE HEARING.

8. WITH REFERENCE TO APPLICATION FOR CERTIFICATION OR DECLARATIONS TERMINATING BARGAINING RIGHTS, SECTION 48(5) OF THE BOARD'S RULES OF PROCEDURE STATES:

48. (5) THE BOARD MAY DISPOSE OF THE APPLICATION WITHOUT CONSIDERING THE STATEMENT OF DESIRE OF ANY EMPLOYEE WHO FAILS TO APPEAR IN PERSON OR BY A REPRESENTATIVE AND ADDUCE EVIDENCE THAT INCLUDES TESTIMONY IN THE PERSONAL KNOWLEDGE AND OBSERVATION OF THE WITNESS AS TO,

- (A) THE CIRCUMSTANCES CONCERNING THE ORIGINATION OF THE STATEMENT OF DESIRE; AND
- (B) THE MANNER IN WHICH EACH SIGNATURE ON THE STATEMENT OF DESIRE WAS OBTAINED.

9. PARAGRAPH 8 OF FORM 5, NOTICE TO EMPLOYEES OF APPLICATION FOR CERTIFICATION AND OF HEARING, STATES:

ANY EMPLOYEE, OR GROUP OF EMPLOYEES, WHO HAS INFORMED THE BOARD IN WRITING OF HIS OR THEIR DESIRE IN ACCORDANCE WITH PARAGRAPHS 5 AND 6 MAY ATTEND AND BE HEARD AT THE HEARING IN PERSON OR BY A REPRESENTATIVE. ANY EMPLOYEE OR REPRESENTATIVE WHO APPEARS AT THE HEARING WILL BE REQUIRED TO TESTIFY, OR PRODUCE A WITNESS OR WITNESSES WHO WILL BE ABLE TO TESTIFY FROM HIS OR THEIR PERSONAL KNOWLEDGE AND OBSERVATION, AS TO (A) THE CIRCUMSTANCES CONCERNING THE ORIGINATION OF THE MATERIAL FILED, AND (B) THE MANNER IN WHICH EACH OF THE SIGNATURES WAS OBTAINED.

THE BOARD MAY DISPOSE OF THE APPLICATION WITHOUT FURTHER NOTICE AND WITHOUT CONSIDERING THE STATEMENT OF DESIRE OF ANY PERSON WHO FAILS TO ATTEND.\*

\*EXPLANATORY NOTE: WHERE EMPLOYEES FAIL TO ATTEND IN PERSON OR BY A REPRESENTATIVE OR TO TESTIFY OR PRODUCE WITNESSES TO TESTIFY AS PROVIDED IN PARAGRAPH 8 ABOVE, THE BOARD NORMALLY DOES NOT ACCEPT THE STATEMENT OF DESIRE AS CASTING DOUBT ON THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT.

10. IT HAS NOT BEEN ALLEGED BY THE RESPONDENT THAT THE TWO EMPLOYEES IN QUESTION DESIRED TO BE HEARD BY THE BOARD. IN ADDITION, IT HAS NOT BEEN ALLEGED BY THE RESPONDENT THAT THESE TWO EMPLOYEES HAD NOT RECEIVED NOTICE OF THE TIME, DATE AND PLACE OF THE HEARING OF THIS APPLICATION FOR CERTIFICATION.

11. EVEN ASSUMING, FOR THE PURPOSES OF ARGUMENT, THAT THESE TWO EMPLOYEES DESIRED TO MAKE REPRESENTATIONS TO THE BOARD (AS OPPOSED, FOR EXAMPLE, TO MERELY WITNESSING THE PROCEEDING BEFORE THE BOARD), THE FACT REMAINS THAT THE HEARING HAD BEEN COMPLETED AND THE DECISION OF THE BOARD HAD BEEN RESERVED BEFORE THEIR PRESENCE IN THE BOARD'S HEARING ROOM WAS ALLEGED BY THE RESPONDENT.



12. IN A LETTER TO THE BOARD DATED JANUARY 22, 1973, THE APPLICANT HAS STATED THAT ITS POSITION WAS INFLUENCED BY THE REPRESENTATIONS MADE AT THE HEARING. THE APPLICANT'S POSITION ON THIS POINT HAS NOT BEEN CHALLENGED. THE BOARD ALSO NOTES THAT THE TWO EMPLOYEES OF THE RESPONDENT, WHO WERE ALLEGED TO HAVE BEEN IN THE BOARD'S HEARING ROOM AT APPROXIMATELY 10.05 A.M. ON JANUARY 11, 1973, HAVE NOT MADE ANY WRITTEN REPRESENTATIONS TO THE BOARD ON ANY SUBJECT MATTER RELATING TO THE HEARING OF THIS APPLICATION FOR CERTIFICATION BY THE BOARD.

13. THE RESPONDENT HAS SUBMITTED THAT, IN ORDER TO AVOID A DENIAL OF NATURAL JUSTICE, THE BOARD SHOULD HEAR THE TWO EMPLOYEES BEFORE RENDERING A DECISION IN THIS APPLICATION. IN ADDITION, THE RESPONDENT, PURSUANT TO SECTION 95 OF THE LABOUR RELATIONS ACT, REQUESTS THE BOARD TO RECONSIDER ITS DECISION TO RESERVE ITS DECISION WITHOUT FIRST HEARING THE REPRESENTATIONS AND ASCERTAINING THE DESIRES OF THESE TWO EMPLOYEES OF THE RESPONDENT.

14. IN OUR VIEW, THERE HAS NOT BEEN A DENIAL OF NATURAL JUSTICE IN THIS APPLICATION. THE PARTIES TO THIS APPLICATION HAVE HAD AN OPPORTUNITY TO BE HEARD. THE TWO EMPLOYEES OF THE RESPONDENT WHO ALLEGEDLY ENTERED THE BOARD'S HEARING ROOM APPARENTLY ORDERED THEIR AFFAIRS SO AS TO DENY THEMSELVES AN OPPORTUNITY TO BE HEARD IN THIS APPLICATION. WE THEREFORE DISMISS THE RESPONDENT'S SUBMISSION THAT THESE TWO EMPLOYEES BE HEARD BEFORE RENDERING A DECISION IN THIS APPLICATION BY THE BOARD. IN THE LIGHT OF THE FOREGOING, THE REQUEST OF THE RESPONDENT THAT THE BOARD RECONSIDER ITS DECISION TO RESERVE ITS DECISION WITHOUT FIRST HEARING THE REPRESENTATIONS AND ASCERTAINING THE DESIRES (IF ANY) OF THE TWO EMPLOYEES OF THE RESPONDENT IS ALSO DENIED.

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DECISION OF BOARD MEMBER J. E. C. ROBINSON, Q.C.: FEBRUARY 26, 1973.

I DISSENT.

AT THE OUTSET OF THE HEARING OF THIS APPLICATION I MUST AGREE THAT THE VICE-CHAIRMAN OF THIS PANEL WAS MOST CAREFUL TO ASCERTAIN THAT THE REPRESENTATIVES OF THE GROUP OF EMPLOYEES WERE NEITHER IN THE BOARD ROOM NOR IN THE AREA SURROUNDING THE BOARD ROOM.

HOWEVER, IT IS NOT UNUSUAL IN THE PRACTICE OF THIS BOARD FOR CHAIRMAN TO ADJOURN PROCEEDINGS FOR A PERIOD OF APPROXIMATELY THIRTY MINUTES IN ORDER THAT PARTIES NOT APPEARING MAY HAVE EVERY OPPORTUNITY TO SO APPEAR.

NEITHER IS IT UNUSUAL, WHEN PROCEEDING WITH THE CASE IN THE ABSENCE OF ONE OF THE PARTIES, TO RESERVE DECISION AND REQUEST THE PARTY APPEARING TO WAIT FOR FROM THIRTY MINUTES TO AN HOUR IN THE EVENT THAT THE NON-APPEARING PARTY WAS DETAINED.

IN ADDITION, IF AN APPLICANT PARTY SHOULD FAIL TO APPEAR, IT IS NOT UNUSUAL FOR THE BOARD TO WAIT FOR APPROXIMATELY THIRTY MINUTES BEFORE DISMISSING THE APPLICATION.

NEITHER IS IT UNUSUAL FOR THE BOARD TO PUT A PARTICULAR CASE TO THE FOOT OF THE LIST IF EITHER OF THE PARTIES DO NOT APPEAR WHEN THE BOARD COMMENCES ITS HEARINGS FOR THE DAY.

GIVEN THIS BACKGROUND, I AM OF THE OPINION THAT INQUIRIES SHOULD HAVE BEEN MADE OF THE REPRESENTATIVES OF THE GROUP OF EMPLOYEES TO ASCERTAIN WHETHER OR NOT THEY DESIRED THE RIGHT TO MAKE REPRESENTATIONS WHEN THEY APPEARED ALMOST SIMULTANEOUSLY WITH THE RESERVATION BY THE BOARD OF ITS DECISION, AND BEFORE ANY NEW PROCEEDING WAS COMMENCED.

IN MY OPINION, THEY SHOULD HAVE BEEN GIVEN AN OPPORTUNITY, AT THE VERY LEAST, TO EXPLAIN THEIR TARDINESS BEFORE THE BOARD IF THEY DESIRED TO MAKE REPRESENTATIONS, AND IF SUCH EXPLANATION WAS REASONABLE, TO BE ALLOWED TO PROCEED WITH THAT ASPECT OF THE CASE.

THIS DECISION IS NOT TO SAY THAT SUCH LATENESS IS TO BE CONDONED BY THE BOARD; IT IS ONLY TO SAY THAT BASED ON THE BOARD'S PAST PRACTICE, CERTAIN ALLOWANCES HAVE BEEN MADE TO VARIOUS PARTIES FOR DELAYS IN ATTENDANCE.

HAVING REGARD TO THE TIME WHEN THE REPRESENTATIVES OF THE GROUP OF EMPLOYEES ARRIVED, I AM OF THE OPINION THAT THE DECISION OF THE MAJORITY NOT TO AFFORD THESE EMPLOYEES AN OPPORTUNITY TO ADDRESS THE BOARD, AT THE VERY LEAST, BORDERS UPON A DENIAL OF NATURAL JUSTICE.

3194-72-R: TEAMSTERS LOCAL UNION No. 879, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. CROWN MOVING AND STORAGE, OPERATED BY DONALD W. MURRAY MOVERS LTD. (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS H.J.F. ADE AND E. BOYER.

APPEARANCES AT THE HEARING: I. J. THOMSON FOR THE APPLICANT; D. L. BRISBIN FOR THE RESPONDENT.

DECISION OF THE BOARD: FEBRUARY 27, 1973.

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2. AT THE OUTSET OF THE HEARING COUNSEL FOR THE RESPONDENT SUBMITTED THAT THE OPERATIONS OF THE RESPONDENT FALL UNDER FEDERAL JURISDICTION AND THAT ACCORDINGLY THIS BOARD IS WITHOUT JURISDICTION TO DEAL WITH THE APPLICATION.

3. THE RESPONDENT IS ENGAGED IN HOUSEHOLD AND GENERAL TRANSPORTATION OF MERCHANDISE BY TRUCK AND ITS TERMINAL DEPOT IS LOCATED IN WEL- LAND. THE RESPONDENT HAS A LICENSE WHICH PERMITS IT TO CARRY GOODS BE- YOND THE BOUNDARIES OF ONTARIO INTO NEW YORK STATE FOR THREE NAMED COM- PANIES. WHILE THE RESPONDENT HAS NO REGULAR SCHEDULE, IT DOES TRANSPORT GOODS TO BUFFALO, N.Y. FROM POINTS IN ONTARIO FOR THE THREE NAMED COM- PANIES, ON AVERAGE, THREE TIMES A WEEK. DURING A PERIOD OF A WEEK THE RESPONDENT WOULD, ON APPROXIMATELY EIGHT OCCASIONS, TRANSPORT HOUSEHOLD FURNISHINGS LOCALLY. ALSO DURING THAT PERIOD THE RESPONDENT WOULD TRANS- PORT GOODS TO HAMILTON OR TORONTO PERHAPS FIVE TIMES.

4. IN VIEW OF THE FACT THAT THE RESPONDENT IS LICENSED TO TRANS- PORT GOODS FROM ONTARIO TO THE UNITED STATES AND DOES SO ON A REGULAR, ALTHOUGH UNSCHEDULED, BASIS, AND HAVING CONSIDERED THE COURT DECISIONS IN RE TANK TRUCK TRANSPORT LTD. CASE 25 D.L.R. (2d) 161 AND REGINA V. COOKSVILLE MAGISTRATE'S COURT, EX PARTE LIQUID CARGO LINES LTD. CASE 46 D.L.R. (2d) 700, AND THIS BOARD'S DECISIONS IN WILSON'S TRUCK LINES LTD. CASE OLRB M.R. MAY 1970 P. 204; INTER-CITY TRUCK LINES LIMITED CASE OLRB M.R. APRIL 1972 P. 385; MERCHANTS SPEEDY DELIVERY LIMITED CASE OLRB M.R. MAY 1972 P. 397, AND CAPITAL COACH LINES COMPANY LIMITED CASE OLRB M.R. NOVEMBER 1972 P. 945, WE FIND THAT THE RESPONDENT'S UN- DERTAKING FALLS WITHIN THE EXCEPTION IN SECTION 92(10)(A) OF THE BRITISH NORTH AMERICA ACT AND THAT ITS LABOUR RELATIONS THEREFORE FALL OUTSIDE THE JURISDICTION OF THIS BOARD.

5. THE APPLICATION ACCORDINGLY IS DISMISSED.

2933-72-U: UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 46 (APPLICANT) V. JAMES HOWDEN AND PARSONS COMPANY OF CANADA, LIMITED AND WESTERN STRESS RELIEVING SERVICES INC. (RESPONDENTS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS P. J. O'KEEFFE AND J. E. C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: L. C. ARNOLD AND W. HOWARD FOR THE APPLI- CANT; W. G. PHELPS AND P. CHAPMAN FOR THE RESPONDENT WESTERN INC; B. V. ELLIOT, J. P. BORDEN AND ALLEN JACKSON FOR THE RESPONDENT HOWDEN AND PARSONS.

DECISION OF THE BOARD:

FEBRUARY 27, 1973.

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2. THIS IS AN APPLICATION UNDER SECTION 123 OF THE LABOUR RELA- TIONS ACT IN WHICH IT IS ALLEGED THAT THE RESPONDENT, JAMES HOWDEN AND PARSONS COMPANY OF CANADA, LIMITED (HEREINAFTER REFERRED TO AS "HOWDEN AND PARSONS"), HAVE ENGAGED IN A LOCKOUT OF MEMBERS OF THE APPLICANT WHO WOULD OTHERWISE BE ENGAGED IN THE WORK OF STRESS RELIEVING ON PIPE



WORK ON A JOB SITE KNOWN AS THE ONTARIO HYDRO PICKERING PROJECT. THE ALLEGED LOCKOUT IS SAID TO HAVE COMMENCED ON OR ABOUT SEPTEMBER 25, 1972.

3. HOWDEN AND PARSONS IS THE MECHANICAL CONTRACTOR UPON THE PROJECT. ON OCTOBER 13, 1971, HOWDEN AND PARSONS SIGNED A COLLECTIVE AGREEMENT WITH THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA (HEREINAFTER REFERRED TO AS THE "U.A."). ARTICLE 15 OF THAT COLLECTIVE AGREEMENT PROVIDES THAT "THE EMPLOYER WILL NOT SUBLET OR CONTRACT-OUT ANY WORK COVERED HEREIN UNLESS THE CONTRACTOR TO WHOM THE WORK IS SUBLET IS IN AGREEMENT EITHER WITH THE UNION OR ANY OF ITS LOCAL UNIONS." (HOWDEN AND PARSONS EMPLOYED MEMBERS OF THE APPLICANT ON THE HYDRO PROJECT DURING WHICH, IN ITS RELATIONSHIP WITH THE APPLICANT AND ITS MEMBERS, IT APPLIED THE TERMS OF THE COLLECTIVE AGREEMENT IN FORCE FROM TIME TO TIME BETWEEN THE APPLICANT AND THE MECHANICAL CONTRACTORS ASSOCIATION OF TORONTO. HOWDEN AND PARSONS, HOWEVER, IS NOT A PARTY TO THAT AGREEMENT.

4. IN OR ABOUT SEPTEMBER 1972, HOWDEN AND PARSONS ENTERED INTO A SUB-CONTRACT WITH WESTERN STRESS RELIEVING SERVICES LTD. (HEREINAFTER REFERRED TO AS "WESTERN LTD.") FOR THE PERFORMANCES OF THE STRESS RELIEF WORK AT THE HYDRO PROJECT WHICH MEMBERS OF THE APPLICANT HAD BEEN PERFORMING. IT APPEARS FROM THE EVIDENCE THAT HAVING BEEN INITIALLY ADVISED OF THE EXISTENCE OF THE PURPORTED COLLECTIVE AGREEMENT BETWEEN WESTERN LTD. AND THE U.A., HOWDEN AND PARSONS CONCLUDED THAT THE SUB-CONTRACT CAME WITHIN THE TERMS OF ARTICLE 15 OF THE COLLECTIVE AGREEMENT BETWEEN IT AND THE U.A.

5. THE APPLICANT CHALLENGED THE VALIDITY OF THE PURPORTED COLLECTIVE AGREEMENT MADE BETWEEN WESTERN LTD. AND THE U.A. ON THE GROUNDS THAT IT CONTRAVENED OR WAS NOT IN ACCORDANCE WITH THE PROVISIONS OF THE CONSTITUTION OF THE U.A. THE APPLICANT ALLEGED THAT HOWDEN AND PARSONS WAS THEREFORE IN VIOLATION OF THE SUB-CONTRACTING PROVISIONS OF THE COLLECTIVE AGREEMENT BETWEEN IT AND THE U.A. AND OF THOSE IN THE AGREEMENT BETWEEN CONTRACTORS ASSOCIATION OF TORONTO AND THE APPLICANT. THAT AGREEMENT PROVIDES:

#### ARTICLE 18 - SUB CONTRACTING

18.1 THE CONTRACTOR AGREES TO ENGAGE ONLY SUBCONTRACTORS WHO EMPLOY MEMBERS OF LOCAL 46 TO PERFORM ALL WORK UNDER THE ACKNOWLEDGED JURISDICTION OF THE U.A., IF SUCH SUB-CONTRACTORS ARE AVAILABLE.

AS NOTED ABOVE, HOWEVER, THAT COLLECTIVE AGREEMENT HAS NOT BEEN ENTERED INTO BY HOWDEN AND PARSONS.

6. IT WAS AGREED BY ALL PARTIES AT THE HEARING THAT THE QUESTION OF THE VALIDITY OF THE PURPORTED COLLECTIVE AGREEMENT BETWEEN WESTERN LTD. AND THE U.A. WAS A FUNDAMENTAL FACTOR IN THE ISSUE BEFORE THE BOARD

AND THAT THE QUESTION AS TO WHETHER THE AGREEMENT ENTERED AS EXHIBIT 9 WAS A COLLECTIVE AGREEMENT SHOULD BE DEALT WITH AND AN INTERIM DECISION WITH RESPECT THERETO BE ISSUED BY THE BOARD BEFORE PROCEEDING FURTHER WITH THE CASE.

7. THE BOARD FINDS UPON THE EVIDENCE THAT THROUGH A SERIES OF TRANSACTIONS WHICH TOOK PLACE BETWEEN DECEMBER 1971 AND JANUARY 1972, WESTERN STRESS RELIEVING SERVICES LTD. BECAME WESTERN STRESS RELIEVING SERVICES INC. (HEREINAFTER REFERRED TO AS "WESTERN INC."). THE BOARD FURTHER FINDS THAT THESE TRANSACTIONS AMOUNTED TO A SALE WITHIN THE MEANING OF SECTION 55 OF THE LABOUR RELATIONS ACT. WESTERN INC. THEREFORE IS BOUND BY THE COLLECTIVE AGREEMENT AS IF IT HAD BEEN A PARTY THERETO PROVIDED, OF COURSE, THAT THE BOARD FINDS THAT THE AGREEMENT IS VALID UNDER THE ACT.

8. THE AGREEMENT (Ex. 9) RELIED UPON BY WESTERN INC. AND HOWDEN AND PARSONS PURPORTS TO BE EFFECTIVE FROM JANUARY 1, 1972 TO FEBRUARY 28, 1974 AND WAS SIGNED BY OFFICERS OF WESTERN LTD. AND BY J.R. ST. ELOI ON BEHALF OF THE U.A. IN AUGUST 1972. THE SCOPE CLAUSE OF THE AGREEMENT PROVIDES THAT IT SHALL APPLY IN RESPECT OF ALL INSPECTION, HEAT TREATING AND NON-DESTRUCTIVE TESTING WORK PERFORMED BY THE EMPLOYER OR BY ANY PERSONS, FIRM OR CORPORATION OWNED OR FINANCIALLY CONTROLLED BY THE EMPLOYER, IN ALL PLACES IN CANADA.

9. THERE CAN BE NO DOUBT THAT THE U.A., BEING A TRADE UNION, IS COMPETENT TO ENTER INTO COLLECTIVE AGREEMENTS AND INDEED NO SUGGESTION WAS MADE BY THE APPLICANT TO THE CONTRARY. IN FACT, THE HOWDEN AND PARSONS' AGREEMENT WITH THE U.A. UPON WHICH THE APPLICANT IN PART RELIES, IS ONE BETWEEN THAT COMPANY AND THE U.A. AND, INCIDENTALLY, IS SIGNED ONLY BY THE GENERAL PRESIDENT ON BEHALF OF THE U.A. THE APPLICANT'S ATTACK IS, AS WE UNDERSTAND IT, DIRECTED TOWARD THE VALIDITY OF THE PARTICULAR AGREEMENT IN ISSUE AND NOT TOWARDS THE GENERAL POWER OF THE U.A. TO CONCLUDE COLLECTIVE AGREEMENTS. WE MIGHT REMARK IN PASSING THAT SECTION 213 OF THE CONSTITUTION OF THE U.A. REFERS TO COLLECTIVE AGREEMENTS ENTERED INTO EITHER BY A LOCAL UNION OR THE UNITED ASSOCIATION. THE EVIDENCE ESTABLISHED THAT AT THE TIME THAT THE ABOVE DOCUMENT IN QUESTION WAS SIGNED, I.E. AUGUST 1972, WESTERN LTD. HAD EMPLOYEES EMPLOYED IN THE PROVINCE OF ONTARIO WHO WERE MEMBERS OF THE U.A. THE EVIDENCE IS THAT THESE EMPLOYEES SUBSEQUENTLY RATIFIED THE AGREEMENT.

10. AT THE TIME OF THE SIGNING OF THE COLLECTIVE AGREEMENT, ST. ELOI, WHO HAD BEEN THE INTERNATIONAL REPRESENTATIVE FOR THE U.A. IN THE WESTERN DISTRICT OF CANADA, WAS APPOINTED TO THE POSITION OF DIRECTOR OF CANADIAN AFFAIRS EFFECTIVE MAY 1, 1972. THIS APPOINTMENT WAS MADE BY THE GENERAL PRESIDENT OF THE U.A. WITH THE APPROVAL OF THE GENERAL EXECUTIVE BOARD OF THE UNION.

11. ST. ELOI, AT ALL MATERIAL TIMES, MAINTAINED THAT HE HAD THE RIGHT AND AUTHORITY TO SIGN THE COLLECTIVE AGREEMENT ON BEHALF OF THE U.A. HIS REPRESENTATIONS IN THIS REGARD WERE ACCEPTED BY WESTERN LTD.

AT THE TIME IT ENTERED INTO THE AGREEMENT WITH THE U.A. IT IS CLEAR, THEREFORE, THAT THE AGREEMENT IN QUESTION WAS ENTERED INTO BY WESTERN LTD. UPON THE REPRESENTATIONS OF A HIGH OFFICER OF THE U.A. WHO COULD REASONABLY BE PRESUMED TO BE COMPETENT TO MAKE A COLLECTIVE AGREEMENT ON BEHALF OF THE U.A. IN THESE CIRCUMSTANCES, WE FIND THAT WESTERN LTD. WAS UNDER NO OBLIGATION AND HAD NO CAUSE TO INQUIRE FURTHER INTO ST. ELOI'S AUTHORITY AND WERE ENTITLED TO RELY ON THE REPRESENTATIONS HE MADE WITH RESPECT TO HIS COMPETENCE TO SIGN AN AGREEMENT. WE MIGHT ADD THAT ST. ELOI'S AUTHORITY TO SIGN FOR THE U.A. WAS UPHELD BY THE GENERAL PRESIDENT OF THE U.A. WHEN IT WAS CHALLENGED BY LOCAL 46 AND SUBSEQUENTLY AT HIS REQUEST. THE FORMER CONFIRMATION OF AUTHORITY WAS, OF COURSE, SUBSEQUENT TO THE SIGNING OF THE AGREEMENT.

12. THE SECONDARY QUESTION AS TO WHETHER THE AGREEMENT CONTRAVENES THE CONSTITUTIONAL RIGHTS OF THE APPLICANT, IS ONE PRIVATE TO THE U.A. AND THE LOCAL UNIONS UNDER THE TERMS OF THEIR CONSTITUTION AND ONE WHICH CANNOT BE SAID TO BE A CONSIDERATION TO BE IMPOSED UPON THE COMPANY PARTY TO THE AGREEMENT. THIS IS PARTICULARLY SO WHERE NO NOTICE OF ANY OBJECTION WITH RESPECT TO COMPETENCY WAS RAISED AT THE TIME THE AGREEMENT WAS ENTERED INTO. THIS CONTROVERSY LIES OUTSIDE THE SCOPE OF THE BOARD'S INQUIRY INTO THE QUESTION AS TO WHETHER THE AGREEMENT CONSTITUTES A COLLECTIVE AGREEMENT UNDER THE ACT. IT IS TO THAT QUESTION THAT THE BOARD HAS ADDRESSED ITSELF.

13. ON THE BASIS OF ALL THE EVIDENCE IN THIS MATTER AND HAVING READ THE AGREEMENT IN QUESTION (Ex. 9), THE BOARD FINDS THAT IT CONSTITUTES A COLLECTIVE AGREEMENT WITHIN THE MEANING OF SECTION 1(1)(E) OF THE LABOUR RELATIONS ACT.

2886-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. C. A. PITTS ENGINEERING CONSTRUCTION LTD. (RESPONDENT).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS H. J. F. ADE AND E. BOYER.

APPEARANCES AT THE HEARING: L. MACLEAN AND W. HAGUE FOR THE APPLICANT; JOHN P. SANDERSON, D. FLYNN AND R. WERRY FOR THE RESPONDENT.

DECISION OF THE BOARD: FEBRUARY 23, 1973.

...

3. THE BOARD HAS CONSIDERED THE REPORT OF THE EXAMINER DATED JANUARY 15, 1973 AND THE REPRESENTATIONS OF THE PARTIES THEREON. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT CLIVE BENTON, HANS DILLERSBERGER, ROBERT MAGRUM AND ENRICO MATTEOTI WERE EMPLOYED BY THE RESPONDENT AS CARPENTERS AND WERE ON THE DRUMMOND ROAD SITE IN NIAGARA FALLS ON NOVEMBER 21, 1972, THE DATE OF THE MAKING OF THIS APPLICATION.



4. THE BOARD FURTHER FINDS THAT PIO CEDOLINI WAS AT THE RELEVANT TIMES EMPLOYED BY THE RESPONDENT AS A NON-WORKING FOREMAN.

5. THE EVIDENCE BEFORE THE BOARD DISCLOSES THAT HANS JENSEN AND ANGELO PIZZI WERE EMPLOYED AS SHOP CARPENTERS BY THE RESPONDENT AND WERE AT WORK ON NOVEMBER 21, 1972. THE SHOP WHERE THESE TWO EMPLOYEES WORKED WAS NOT AT OR NEAR THE DRUMMOND ROAD SITE, BUT IS RATHER LOCATED NEAR OR ADJACENT TO A PROJECT OF THE RESPONDENT WHICH IS NOT AFFECTED BY THIS APPLICATION FOR CERTIFICATION.

6. THE APPLICANT CHALLENGED THE INCLUSION OF JENSEN AND PIZZI IN THE BARGAINING UNIT ON THE GROUNDS THAT THEY WERE SHOP CARPENTERS WHO WORKED ON OTHER PROJECTS AND NOT ON THE DRUMMOND ROAD SITE. THE RESPONDENT CONTENDED THAT JENSEN AND PIZZI, WHILE SHOP CARPENTERS, DID WORK ON THE RELEVANT DATE FOR THE DRUMMOND ROAD SITE AND THAT BECAUSE THIS IS AN AREA APPLICATION, THESE PERSONS SHOULD BE INCLUDED IN ANY APPROPRIATE BARGAINING UNIT.

7. ON NOVEMBER 21, 1972, JENSEN AND PIZZI WORKED IN THE SHOP CUTTING ROUND FORMS FOR THE DRUMMOND ROAD SITE. THESE FORMS WERE THEN ASSEMBLED IN THE YARD BY CARPENTERS FROM THE DRUMMOND ROAD SITE.

8. IT IS CLEAR THAT JENSEN AND PIZZI WERE NOT EMPLOYED AS ON-SITE CARPENTERS BY THE RESPONDENT. HOWEVER, THE QUESTION ARISES WHETHER JENSEN AND PIZZI OUGHT TO BE REGARDED AS "EMPLOYEES" WITHIN THE MEANING OF SECTION 106 (B) OF THE LABOUR RELATIONS ACT AND WHETHER THEY OUGHT TO BE INCLUDED IN THE BARGAINING UNIT IN THE CIRCUMSTANCES OF THIS APPLICATION. SECTION 106(B) STATES:

"EMPLOYEE" INCLUDES AN EMPLOYEE ENGAGED IN WHOLE OR IN PART IN OFF-SITE WORK BUT WHO IS COMMONLY ASSOCIATED IN HIS WORK OR BARGAINING WITH ON-SITE EMPLOYEES.

9. CLEARLY, JENSEN AND PIZZI WERE ENGAGED IN WHOLE OR IN PART IN OFF-SITE WORK. HOWEVER, ON THE EVIDENCE BEFORE IT, THE BOARD IS NOT PREPARED TO FIND THAT THEY WERE COMMONLY ASSOCIATED IN THEIR WORK WITH ON-SITE EMPLOYEES. THE EVIDENCE BEFORE THE BOARD INDICATES THAT JENSEN AND PIZZI PERFORMED CERTAIN WORK WHICH WAS A PRELUDE TO WORK TO BE PERFORMED BY ON-SITE EMPLOYEES. THE FACT THAT THE SHOP WORK IS PART OF THE SEQUENCE OF OPERATIONS WHICH LEADS UP TO SOME OF THE ON-SITE WORK IS NOT, IN ITSELF, SUFFICIENT TO MAKE OFF-SITE EMPLOYEES COMMONLY ASSOCIATED IN THEIR WORK WITH ON-SITE EMPLOYEES. IN ADDITION, ON THE REPRESENTATIONS BEFORE IT, THE BOARD IS UNABLE TO FIND THAT SUCH OFF-SITE EMPLOYEES ARE COMMONLY ASSOCIATED IN THEIR BARGAINING WITH ON-SITE EMPLOYEES. THE TWO COLLECTIVE AGREEMENTS BINDING ON THE PARTIES IN THE NIAGARA PENINSULA DO NOT COVER CARPENTERS WHO ARE SHOP EMPLOYEES.

12. FOR THE PURPOSES OF CLARITY, THE BOARD DECLARES THAT CARPENTERS EMPLOYED IN THE SHOP ARE NOT INCLUDED IN THE BARGAINING UNIT.

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14. A CERTIFICATE WILL ISSUE TO THE APPLICANT.









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## APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

2010-72-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL UNION No. 91 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. COMPAGNIE MIRON LTEE (RESPONDENT) V. UNITED CEMENT, LIME & GYPSUM WORKERS INTERNATIONAL UNION LOCAL 384 (INTERVENER). (REQUEST DENIED).

[1973] 2 OLRB M.R. - PAGE 60.

2234-72-R: SHEET METAL WORKERS INTERNATIONAL ASSOCIATION LOCAL UNION #285 (APPLICANT) V. APPLEWOOD AIR-CONDITIONING LIMITED (RESPONDENT). (REQUEST DENIED).

2786-72-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. MARSLAND ENGINEERING LIMITED (RESPONDENT). (REQUEST DENIED).

## APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - SECTION 79

2178-72-U: THE HOTELS, CLUBS, RESTAURANTS, TAVERNS EMPLOYEES UNION, LOCAL 261, A.F.L.-C.I.O.-C.L.C., 1091 WELLINGTON STREET, OTTAWA, ONTARIO (COMPLAINANT) V. THE ALEXANDRA HOTEL, 352 BANK STREET, OTTAWA, ONTARIO (RESPONDENT). (REQUEST DENIED).

## APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

### DURING FEBRUARY 1973

### BARGAINING AGENTS CERTIFIED DURING FEBRUARY

#### NO VOTE CONDUCTED

21-70-R: CSAO NATIONAL (INC.) (APPLICANT) V. RELIGIOUS HOSPITALERS OF ST. JOSEPH OF THE HOTEL DIEU OF KINGSTON (RESPONDENT).

UNIT: "ALL MEDICAL LABORATORY TECHNOLOGISTS, MEDICAL LABORATORY TECHNICIANS AND THEIR ASSISTANTS EMPLOYED BY THE RESPONDENT IN ITS MEDICAL LABORATORIES AT KINGSTON, SAVE AND EXCEPT CHIEF TECHNOLOGISTS AND PERSONS ABOVE THE RANK OF CHIEF TECHNOLOGIST, OFFICE AND CLERICAL STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIODS, AND THOSE PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 729." (37 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR PURPOSES OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT EKG AND EEG TECHNICIANS,

LABORATORY ADMINISTRATIVE ASSISTANT AND MORGUE ATTENDANT ARE NOT INCLUDED IN THE BARGAINING UNIT.). (FOR PURPOSES OF CLARITY THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT CHARGE TECHNOLOGISTS ARE INCLUDED IN THE BARGAINING UNIT.).

18763-70-R: CSAO NATIONAL (INC.) (APPLICANT) V. TORONTO INSTITUTE OF MEDICAL TECHNOLOGY (RESPONDENT).

UNIT: "ALL TEACHING AND INSTRUCTIONAL EMPLOYEES OF THE RESPONDENT EMPLOYED AT TORONTO, SAVE AND EXCEPT DIVISION HEADS AND PERSONS ABOVE THE RANK OF DIVISION HEAD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (27 EMPLOYEES IN THE UNIT).

1635-71-R: THE MECHANICAL CONTRACTORS ASSOCIATION OF OTTAWA (APPLICANT) V. SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL UNION 47 (RESPONDENT).

- AND -

1637-71-R: THE MECHANICAL CONTRACTORS ASSOCIATION OF OTTAWA (APPLICANT) V. SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL UNION 47 (RESPONDENT).

UNIT: "ALL EMPLOYERS OF SHEET METAL WORKERS AND SHEET METAL WORKER APPRENTICES FOR WHOM THE RESPONDENT HAS BARGAINING RIGHTS IN THE JUDICIAL DISTRICT OF OTTAWA - CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, THE UNITED COUNTIES OF STORMONT, DUNDAS AND GLENGARRY, THE COUNTIES OF GRENVILLE, LANARK AND RENFREW AND THAT PART OF THE DISTRICT OF NIPISSING SOUTH OF A LINE FROM MATTAWA ON THE QUEBEC BORDER TO THE NORTHWEST CORNER OF BOYD TOWNSHIP, SOUTHWEST TO THE NORTHWEST CORNER OF PAXTON TOWNSHIP IN THE INDUSTRIAL, COMMERCIAL AND INSTITUTIONAL SECTOR AND RESIDENTIAL SECTOR OF THE CONSTRUCTION INDUSTRY." (NO EMPLOYEES IN THE UNIT).

[1973] 2 OLRB M.R. - PAGE 99.

1636-71-R: THE MECHANICAL CONTRACTORS ASSOCIATION OF OTTAWA (APPLICANT) V. THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL UNION 71 (RESPONDENT).

- AND -

1638-71-R: THE MECHANICAL CONTRACTORS ASSOCIATION OF OTTAWA (APPLICANT) V. THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL UNION 71 (RESPONDENT).

UNIT: "ALL PLUMBERS, PLUMBERS' APPRENTICES, STEAMFITTERS, STEAMFITTERS' APPRENTICES AND WELDERS FOR WHOM THE RESPONDENT HAS BARGAINING RIGHTS IN THE JUDICIAL DISTRICT OF OTTAWA - CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL AND THE COUNTY OF LANARK IN THE INDUSTRIAL, COMMERCIAL AND INSTITUTIONAL SECTOR AND RESIDENTIAL SECTOR OF THE CONSTRUCTION INDUSTRY." (NO EMPLOYEES IN THE UNIT).

2247-72-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. RAYBESTOS-MANHATTAN (CANADA) LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT AT PETERBOROUGH, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT." (28 EMPLOYEES IN THE UNIT).

2383-72-R: CSAO NATIONAL (INC.) (APPLICANT) V. BOARD OF TRUSTEES OF THE RIVERSIDE HOSPITAL OF OTTAWA (RESPONDENT) V. EMPLOYEE (OBJECTOR).

UNIT: "ALL MEDICAL LABORATORY TECHNOLOGISTS, MEDICAL LABORATORY TECHNICIANS AND THEIR ASSISTANTS EMPLOYED BY THE RESPONDENT IN ITS MEDICAL LABORATORIES IN OTTAWA, SAVE AND EXCEPT ASSISTANT CHIEF TECHNOLOGISTS, PERSONS ABOVE THE RANK OF ASSISTANT CHIEF TECHNOLOGIST, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK, STUDENTS EMPLOYED DURING SCHOOL VACATION PERIODS, AND THOSE PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 796." (24 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR THE PURPOSES OF CLARITY, THE BOARD NOTED THAT ECG TECHNICIANS AND EEG TECHNICIANS ARE NOT INCLUDED IN THE SAID BARGAINING UNIT.).

2518-72-R: CSAO NATIONAL (INC.) (APPLICANT) V. NORTH BAY HOSPITAL COMMISSION OPERATING NORTH BAY CIVIC HOSPITAL (RESPONDENT) V. CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 139 (INTERVENER #1) V. ONTARIO BRANCH, CANADIAN PHYSIOTHERAPY ASSOCIATION (INTERVENER #2).

UNIT: "ALL MEDICAL TECHNICIANS AND TECHNOLOGISTS AND THEIR ASSISTANTS EMPLOYED BY THE RESPONDENT IN ITS LABORATORIES AT NORTH BAY, SAVE AND EXCEPT ASSISTANT TECHNICAL DIRECTOR, PERSONS ABOVE THE RANK OF ASSISTANT TECHNICAL DIRECTOR, CLERICAL WORKERS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS COVERED BY SUBSISTING COLLECTIVE AGREEMENTS BETWEEN THE RESPONDENT AND EACH OF THE FOLLOWING: C.U.P.E. LOCAL 139, I.U.O.E. LOCAL 796 AND NURSES' ASSOCIATION NORTH BAY CIVIC HOSPITAL." (26 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR THE PURPOSE OF CLARITY, THE BOARD NOTED THAT THERE ARE NO PHYSIOTHERAPISTS EMPLOYED IN THE RESPONDENT'S LABORATORIES AT NORTH BAY.).

2886-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. C. A. PITTS ENGINEERING CONSTRUCTION LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF NIAGARA AND THE COUNTY OF HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, PERSONS COVERED BY A COLLECTIVE AGREEMENT BETWEEN THE PARTIES DATED APRIL 21, 1972 AND PERSONS COVERED BY A COLLECTIVE AGREEMENT BETWEEN THE WELLAND CANAL TWINNING PROJECT CONTRACTORS'.



ASSOCIATION AND THE WELLAND CANAL CONSTRUCTION COUNCIL DATED MARCH 25, 1970." (20 EMPLOYEES IN THE UNIT). (FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT CARPENTERS EMPLOYED IN THE SHOP ARE NOT INCLUDED IN THE BARGAINING UNIT.).

[1972] 2 OLRB M.R. - PAGE 123.

2916-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. KAWARTHA CLEANING AND SUPPLIES (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN OPS TOWNSHIP, SAVE AND EXCEPT OWNER-OPERATOR AND OFFICE STAFF." (9 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES).

2934-72-R: FEDERATION OF CHILDREN'S AID STAFFS (APPLICANT) V. THE CHILDREN'S AID SOCIETY OF SAULT STE. MARIE AND THE DISTRICT OF ALGOMA (RESPONDENT).

UNIT: "ALL SOCIAL WORKERS, SOCIAL WORK ASSISTANTS AND CASE-AIDES EMPLOYED BY THE RESPONDENT IN THE DISTRICT OF ALGOMA, SAVE AND EXCEPT SUPERVISOR, PERSONS ABOVE THE RANK OF SUPERVISOR, PERSONS EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (14 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

2935-72-R: FEDERATION OF CHILDREN'S AID STAFFS (APPLICANT) V. THE CHILDREN'S AID SOCIETY OF SAULT STE. MARIE AND THE DISTRICT OF ALGOMA (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE DISTRICT OF ALGOMA, SAVE AND EXCEPT OFFICE SUPERVISORS, PERSONS ABOVE THE RANK OF OFFICE SUPERVISOR, SOCIAL WORKERS, SOCIAL WORK ASSISTANTS, CASE-AIDES, SOCIAL WORK SUPERVISORS, SECRETARY TO THE DIRECTOR, PERSONS EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (6 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

2947-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. LAURENTIAN UNIVERSITY OF SUDBURY (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 796 (INTERVENER) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SUDBURY, EMPLOYED IN THE MAINTENANCE AND PRINTING DEPARTMENT SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, CLERICAL STAFF, PORTERS, TECHNICAL PERSONNEL, TEACHING STAFF, LIBRARIANS, STUDENTS EMPLOYED DURING THEIR SCHOOL VACATION PERIODS AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT ENTERED INTO BETWEEN THE RESPONDENT AND THE INTERVENER." (30 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

2990-72-R: DRIVER INSTRUCTORS' UNION, LOCAL 1669, CLC (APPLICANT) v. ETOBICOKE DRIVING SCHOOL (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING IN AND OUT OF METROPOLITAN TORONTO, SAVE AND EXCEPT MANAGER, PERSONS ABOVE THE RANK OF MANAGER, OFFICE STAFF AND PERSONS EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (15 EMPLOYEES IN THE UNIT).

3042-72-R: UNITED PAPERWORKERS INTERNATIONAL UNION (APPLICANT) v. DOM-TAR PACKAGING LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL OFFICE EMPLOYEES OF THE RESPONDENT AT KITCHENER, SAVE AND EXCEPT MANAGER OF MANUFACTURING, MANAGER OF SALES, ACCOUNTING MANAGER AND THE SECRETARY TO THE MANAGER OF MANUFACTURING." (20 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

[1973] 2 OLRB M.R. - PAGE 114.

3052-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1669 (APPLICANT) v. DALE PERUSSE (RESPONDENT).

UNIT: "ALL LATHERS, LATHERS' APPRENTICES, CARPENTERS, CARPENTERS' APPRENTICES AND CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF RAINY RIVER, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

3054-72-R: THE PEEL COUNTY BOARD OF EDUCATION EMPLOYEES' ASSOCIATION (APPLICANT) v. THE PEEL COUNTY BOARD OF EDUCATION (RESPONDENT).

UNIT: "ALL OFFICE, CLERICAL AND NON-ACADEMIC CLERICAL LAY ASSISTANTS OF THE RESPONDENT, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, BUYERS, TECHNICAL PERSONNEL, SUPPLY TEACHER DESPATCHERS, THE IMMEDIATE OFFICE STAFF OF THE DIRECTOR OF EDUCATION, THE STAFF OF THE PERSONNEL ADMINISTRATOR, THE PRIVATE SECRETARY TO EACH OF THE SUPERINTENDENTS AND ASSISTANT SUPERINTENDENTS OF ACADEMIC AFFAIRS AND BUSINESS AFFAIRS AND TO THE TREASURER, CHIEF ACCOUNTANT AND INTERNAL AUDITOR, EMPLOYEES COVERED UNDER A SUBSISTING COLLECTIVE AGREEMENT WITH THE PEEL COUNTY BOARD OF EDUCATION CARETAKERS' ASSOCIATION, STUDENTS EMPLOYED ON A CO-OPERATIVE TRAINING BASIS AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (432 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR PURPOSES OF CLARITY THE BOARD FURTHER NOTED THE AGREEMENT OF THE PARTIES THAT THE CATEGORY OF NON-ACADEMIC CLERICAL LAY ASSISTANTS INCLUDES PERSONS FALLING IN THE CLASSIFICATIONS OF HEALTH ROOM ATTENDANT, LIBRARY ASSISTANT, STUDENT SUPERVISOR, SCHOOL SERVICES CO-ORDINATOR AND TEACHER'S AID.).

3090-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. RENFREW VICTORIA HOSPITAL (RESPONDENT) v. ONTARIO BRANCH, CANADIAN PHYSIOTHERAPY ASSOCIATION (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT RENFREW, ONTARIO, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE AND CLERICAL STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (101 EMPLOYEES IN THE UNIT). (FOR THE PURPOSES OF CLARITY THE BOARD NOTED THE TERM "TECHNICAL PERSONNEL" INCLUDES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGIST, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS.).

3091-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. RENFREW VICTORIA HOSPITAL REHABILITATION CENTRE (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT RENFREW, ONTARIO, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENTS DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE AND CLERICAL STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (27 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR THE PURPOSES OF CLARITY THE BOARD NOTED THAT THE TERM TECHNICAL PERSONNEL INCLUDES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGIST, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS.).

3092-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. RENFREW VICTORIA HOSPITAL (RESPONDENT).

UNIT: "ALL LABORATORY AND X-RAY TECHNOLOGISTS AND TECHNICIANS OF THE RESPONDENT AT RENFREW, ONTARIO, SAVE AND EXCEPT CHIEF TECHNOLOGIST AND CHIEF TECHNICIAN AND PERSONS ABOVE THE RANK OF CHIEF TECHNOLOGIST AND CHIEF TECHNICIAN." (5 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

3093-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. RENFREW VICTORIA HOSPITAL (RESPONDENT).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT RENFREW, ONTARIO, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, THE PERSONAL SECRETARY TO THE ADMINISTRATOR AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (16 EMPLOYEES IN THE UNIT).

3098-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 527 (APPLICANT) V. S. HENRY & SONS LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (16 EMPLOYEES IN THE UNIT).



3099-72-R: UNITED CEMENT, LIME AND GYPSUM WORKERS INTERNATIONAL UNION, AFL-CIO-CLC (APPLICANT) V. DOUGHTY CONCRETE PRODUCTS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF SMITH, SAVE AND EXCEPT FOREMEN AND DISPATCHERS, PERSONS ABOVE THE RANK OF FOREMAN AND DISPATCHER, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (9 EMPLOYEES IN THE UNIT).

3100-72-R: UNITED TEXTILE WORKERS OF AMERICA (APPLICANT) V. FIBERWORLD LIMITED-LIMITEE (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAWKESBURY, SAVE AND EXCEPT FORMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, NURSES, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (28 EMPLOYEES IN THE UNIT).

3107-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. REITMAN'S (ONTARIO) LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

3111-72-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. ADVICE CONTRACTING LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

3115-72-R: BRICKLAYERS, MASONS INDEPENDENT UNION OF CANADA LOCAL 1 (APPLICANT) V. BARBIERI BROTHERS MASONRY CONTRACTORS (RESPONDENT).

UNIT: "ALL BRICKLAYERS, BRICKLAYERS' APPRENTICES AND CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (8 EMPLOYEES IN THE UNIT).

3117-72-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. HUGHES BOAT WORKS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HURON PARK, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (73 EMPLOYEES IN THE UNIT).

3119-72-R: PRINTING SPECIALTIES AND PAPER PRODUCTS UNION, LOCAL 466 (APPLICANT) V. J. H. MCNAIRN LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (30 EMPLOYEES IN THE UNIT).

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3124-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 183 (APPLICANT) V. ADVICE CONTRACTING LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTRUCTION LABOURERS ENGAGED IN BUILDING PROJECTS, AND SHOP AND YARD EMPLOYEES." (5 EMPLOYEES IN THE UNIT).

3125-72-R: COMMUNICATIONS WORKERS OF CANADA (CLC) (APPLICANT) V. AMPITROL ELECTRONICS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT OR WORKING OUT OF METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE AND SALES STAFF." (13 EMPLOYEES IN THE UNIT).

3135-72-R: LABORERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL UNION No. 597 (APPLICANT) V. NEWMAN BROS. CO. LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF PETERBOROUGH, VICTORIA AND THE PROVISIONAL COUNTY OF HALIBURTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

3136-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL UNION 93 (APPLICANT) V. STRUCTURE ARSENAULT LTEE (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

3137-72-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. WESTANK INDUSTRIES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (16 EMPLOYEES IN THE UNIT).

3139-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837 (APPLICANT) V. LINCOLN PLASTERING AND DRYWALL (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF NIAGARA AND THE COUNTY OF HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

3140-72-R: TEAMSTERS LOCAL UNION No. 879, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. DELMAR CONTRACTING LTD. (RESPONDENT).

UNIT: "ALL TRUCK DRIVERS IN THE EMPLOY OF THE RESPONDENT, IN THE COUNTY OF WENTWORTH AND THE TOWNSHIP OF NASSAGAWEYA AND THE TOWN OF BURLINGTON IN THE COUNTY OF HALTON, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN." (8 EMPLOYEES IN THE UNIT).

3141-72-R: OPERATIVE PLASTERER'S & CEMENT MASON'S INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA LOCAL UNION 124 OTTAWA, ONTARIO (APPLICANT) V. AQUATITE (1971) LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN WATERPROOFING IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

3142-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1089 (APPLICANT) V. G & L DEVELOPMENTS INC. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF LAMBTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (9 EMPLOYEES IN THE UNIT).



3144-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. EMPIRE PLANT MAINTENANCE LTD. (RESPONDENT) V. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT THE NATIONAL ARTS CENTRE, 1 CONFEDERATION SQUARE, OTTAWA, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER." (12 EMPLOYEES IN THE UNIT).

3147-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 527 (APPLICANT) V. MAURICE BRAY ENTREPRENEUR BREQUETEUR (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE UNITED COUNTIES OF STORMONT, DUNDAS AND GLENGARRY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

3149-72-R: THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS - LOCAL UNION 586 (APPLICANT) V. PROULX ELECTRIC REG'D (RESPONDENT).

UNIT: "ALL ELECTRICIANS AND ELECTRICIANS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

3150-72-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. NADECO LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS, CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THAT PORTION OF THE DISTRICT OF ALGOMA SOUTH OF THE 49TH PARALLEL OF LATITUDE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

3152-72-R: OFFICE & PROFESSIONAL EMPLOYEES INTERNATIONAL UNION, LOCAL 225 (APPLICANT) V. CUSTOMS EXCISE UNION (RESPONDENT).

UNIT: "ALL OFFICE, CLERICAL AND PRINT SHOP EMPLOYEES OF THE RESPONDENT AT OTTAWA, SAVE AND EXCEPT APPOINTED AND ELECTED OFFICERS AND TECHNICAL EXPERTS IN THE STAFF RELATIONS, CLASSIFICATION AND EDUCATION FIELD." (16 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR THE PURPOSES OF CLARITY, THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE NATIONAL PRESIDENT IS THE SOLE ELECTED OFFICER AT OTTAWA AND THAT TWO TECHNICAL OFFICERS, THE NATIONAL SECRETARY-TREASURER AND THE DIRECTOR OF STAFF RELATIONS ARE THE APPOINTED OFFICERS.).

3155-72-R: INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES - LOCAL 1891 (APPLICANT) V. MONTENEGRINO DRYWALL & CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL PAINTERS AND PAINTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (11 EMPLOYEES IN THE UNIT). (FOR THE PURPOSE OF CLARITY, THE BOARD DECLARED THAT DRYWALL TAPERS ARE INCLUDED IN THE BARGAINING UNIT.).

3161-72-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL 647 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. GENERAL BAKERIES LIMITED (RESPONDENT).

UNIT: "ALL DRIVER SALESMEN OF THE RESPONDENT AT LINDSAY, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR AND OFFICE STAFF." (4 EMPLOYEES IN THE UNIT).

3164-72-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. THOMAS BUILT BUSES OF CANADA LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: ALL EMPLOYEES OF THE RESPONDENT AT WOODSTOCK, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, SECURITY GUARDS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (76 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

3167-72-R: GRAPHIC ARTS INTERNATIONAL UNION, OTTAWA LOCAL 224 (APPLICANT) V. CLOVERDALE PRINTING COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OTTAWA, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (19 EMPLOYEES IN THE UNIT).

3168-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. A. J. MCCARTHY CONSTRUCTION (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WELLINGTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

3169-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837 (APPLICANT) V. L. J. S. CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF NIAGARA AND THE COUNTY OF HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

3170-72-R: CSAO NATIONAL (INC.) (APPLICANT) V. THE GENERAL HOSPITAL OF PORT ARTHUR (RESPONDENT).

UNIT #1: "ALL LABORATORY TECHNICIANS AND TECHNOLOGISTS AND LABORATORY ASSISTANTS EMPLOYED BY THE RESPONDENT IN ITS MEDICAL LABORATORIES IN THE CITY OF THUNDER BAY, SAVE AND EXCEPT ASSISTANT CHIEF LABORATORY TECHNOLOGIST, PERSONS ABOVE THE RANK OF ASSISTANT CHIEF LABORATORY TECHNOLOGIST, PRACTICING MEMBERS OF THE MEDICAL AND NURSING PROFESSIONS, BIOCHEMISTS AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (19 EMPLOYEES IN THE UNIT).

UNIT #2: "ALL LABORATORY TECHNICIANS AND TECHNOLOGISTS AND LABORATORY ASSISTANTS REGULARLY EMPLOYED BY THE RESPONDENT FOR NOT MORE THAN 24 HOURS PER WEEK IN ITS MEDICAL LABORATORIES IN THE CITY OF THUNDER BAY, SAVE AND EXCEPT ASSISTANT CHIEF LABORATORY TECHNOLOGIST, PERSONS ABOVE THE RANK OF ASSISTANT CHIEF LABORATORY TECHNOLOGIST, PRACTICING MEMBERS OF THE MEDICAL AND NURSING PROFESSIONS AND BIOCHEMISTS." (2 EMPLOYEES IN THE UNIT).

3173-72-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. VICTOR H. BURT INC. (RESPONDENT).

UNIT: "ALL ELECTRICIANS AND ELECTRICIANS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF NIAGARA AND THE COUNTY OF HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

3184-72-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 880 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. VALLANCE BROWN & COMPANY LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SARNIA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (3 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

3188-72-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) V. CANADIAN INDUSTRIAL CONSULTANTS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT PRODUCTION MANAGER, PERSONS ABOVE THE RANK OF PRODUCTION MANAGER, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (70 EMPLOYEES IN THE UNIT).

3189-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1190 (APPLICANT) V. NICK MARCONI CARPENTER CONTRACTORS (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK



AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

3190-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 247 (APPLICANT) V. AITON PIPING & PROCESS PLANT LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LENNOX AND ADDINGTON, FRONTENAC AND THE TOWNSHIPS OF REAR OF LEEDS AND LANSDOWNE, FRONT OF LEEDS AND LANSDOWNE, REAR OF YONGE AND ESCOTT, FRONT OF YONGE AND FRONT OF ESCOTT IN THE COUNTY OF LEEDS, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

3199-72-R: THE PROFESSIONAL INSTITUTE STAFF ASSOCIATION (APPLICANT) V. THE PROFESSIONAL INSTITUTE OF THE PUBLIC SERVICE OF CANADA (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OTTAWA AND LONDON, SAVE AND EXCEPT EXECUTIVE DIRECTOR AND SECRETARY TREASURER." (39 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

3200-72-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. HUDSON'S BAY COMPANY, NORTHERN STORES DEPARTMENT (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT MARATHON, ONTARIO, REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (6 EMPLOYEES IN THE UNIT).

3202-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. CLOVERLAWN INVESTMENTS LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

3203-72-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. TELEDYNE LAARS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OAKVILLE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OUTSIDE SERVICE WORKERS AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (25 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

3212-72-R: UNITED PAPERWORKERS INTERNATIONAL UNION (APPLICANT) V. COLUMBIA FINISHING MILLS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT CORNWALL, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (16 EMPLOYEES IN THE UNIT).

3214-72-R: GENERAL TRUCK DRIVERS' UNION LOCAL 938 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. PETERBOROUGH FREIGHT LINES LIMITED (RESPONDENT) V. EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT OR WORKING OUT OF PETERBOROUGH, SAVE AND EXCEPT DISPATCHERS, FOREMEN, PERSONS ABOVE THE RANKS OF DISPATCHER AND FOREMAN, OFFICE AND SALES STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (10 EMPLOYEES IN THE UNIT).

3215-72-R: OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA LOCAL UNION 124, OTTAWA, ONTARIO (APPLICANT) V. HULL OTTAWA CONCRETE FLOORING & PARKING LOT STRIPPING CO. LTD. (RESPONDENT).

UNIT: "ALL CEMENT MASONS AND CEMENT MASONS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

3217-72-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837 (APPLICANT) V. HAMILTON TUG BOAT COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN." (20 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES).

3218-72-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRON WORKERS, LOCAL 759 (APPLICANT) V. UNITED GRAIN GROWERS LIMITED (CONSTRUCTION DIVISION) (RESPONDENT).

UNIT: "ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF THUNDER BAY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

3225-72-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES LOCAL 647 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. BROWN'S AUTOMATIC VENDING LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT KINGSTON, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, CULINARY STAFF (KITCHEN), HOSTESSES, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (19 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

3234-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1190 (APPLICANT) V. TITO & JOSE SANTOS CARPENTERS (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

3235-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. ONTARIO SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS, COMMONLY KNOWN AS ONTARIO HUMANE SOCIETY (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WHITBY, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK." (9 EMPLOYEES IN THE UNIT).

3261-72-R: THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 804 (APPLICANT) V. NEWMARCH MECHANICAL LIMITED (RESPONDENT).

UNIT: "ALL ELECTRICIANS AND ELECTRICIANS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WATERLOO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

3264-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. SPAN DESIGN & CONSTRUCTION CO. LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (8 EMPLOYEES IN THE UNIT).

3276-72-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. DELMAR CONTRACTING LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF WENTWORTH AND THE TOWNSHIP OF NASSAGAWEYA AND THE TOWN OF BURLINGTON IN THE COUNTY OF HALTON ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

3299-72-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL UNION 721 (APPLICANT) V. G & H STEEL SERVICE OF CANADA LIMITED (RESPONDENT).



UNIT: "ALL REINFORCING RODMEN IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF SIMCOE, THE DISTRICT OF MUSKOKA AND THE TOWNSHIPS OF RAMA, MARA AND THORAH IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

3304-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. K. F. PARSLEY & ASSOCIATES (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

3312-72-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. MYRLACO CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF WENTWORTH AND THE TOWNSHIP OF NASSAGAWEYA AND THE TOWN OF BURLINGTON IN THE COUNTY OF HALTON ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

#### APPLICATIONS CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

3006-72-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) V. METAL TEXTILE OF CANADA, DIVISION OF GENCOB OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF FOREMAN AND FORELADY, SUPERVISORS, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (73 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON REVISED  
VOTERS' LIST

69

NUMBER OF PERSONS WHO CAST BALLOTS

66

NUMBER OF BALLOTS MARKED IN FAVOUR  
OF APPLICANT

36

NUMBER OF BALLOTS MARKED AGAINST  
APPLICANT

30

3083-72-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (U.A.W.) (APPLICANT) V. NORTHERN ELECTRIC COMPANY LIMITED (RESPONDENT) V. CANADIAN UNION OF COMMUNICATION WORKERS (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS SYSTEMS APPARATUS DIVISION, BELLEVILLE PLANT, AT BELLEVILLE, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF AND PLANT SECURITY STAFF." (736 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		728
NUMBER OF PERSONS WHO CAST BALLOTS	677	
NUMBER OF SPOILED BALLOTS	4	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	408	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF INTERVENER	265	

APPLICATIONS CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

2861-72-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. OSTMAN LUMBER COMPANY LTD. (RESPONDENT) V. OSTMAN LUMBER WORKMENS' ASSOCIATION (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN HERSCHEL TOWNSHIP IN THE COUNTY OF HASTINGS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (38 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		36
NUMBER OF PERSONS WHO CAST BALLOTS	31	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	24	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	7	

2979-72-R: BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 478, AFFILIATED WITH THE A.F. OF L., C.I.O., C.L.C. (APPLICANT) V. HUNTSVILLE DISTRICT MEMORIAL HOSPITAL (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HUNTSVILLE REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, PERSONS EMPLOYED IN THE DIETARY DEPARTMENT, TECHNICAL PERSONNEL, SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR AND OFFICE STAFF." (21 EMPLOYEES IN THE UNIT). (FOR THE PURPOSE OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE TERM TECHNICAL PERSONNEL INCLUDES X-RAY TECHNICIANS, LABORATORY TECHNICIANS AND PHYSIOTHERAPISTS.).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		10
NUMBER OF PERSONS WHO CAST BALLOTS	10	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	10	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	0	

3040-72-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL 880  
AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,  
WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. BOARD OF WORKS, COR-  
PORATION TOWN OF DRESDEN (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT DRESDEN, SAVE AND EXCEPT  
FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF." (5  
EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		5
NUMBER OF PERSONS WHO CAST BALLOTS	5	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	4	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	1	

3043-72-R: ROCKWELL EMPLOYEES ASSOCIATION (APPLICANT) V. NORTH AMERI-  
CAN ROCKWELL OF CANADA LTD. (ROCKWELL STANDARD DIVISION - TILBURY) AND  
ROCKWELL STANDARD (WALLACEBURG) LTD. (RESPONDENTS) V. INTERNATIONAL  
UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS  
OF AMERICA, (UAW) (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENTS IN TILBURY, SAVE AND EXCEPT  
FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (220  
EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		217
NUMBER OF PERSONS WHO CAST BALLOTS	214	
NUMBER OF SPOILED BALLOTS	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	118	
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	89	
NUMBER OF BALLOTS MARKED IN FAVOUR OF NO TRADE UNION	6	



APPLICATIONS FOR CERTIFICATION DISMISSED DURING FEBRUARY

NO VOTE CONDUCTED

2959-72-R: LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION No. 597 (APPLICANT) V. CONSOLIDATED BUILDING CORPORATION LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (12 EMPLOYEES).

2964-72-R: OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL UNION No. 124 OTTAWA (APPLICANT) V. A.L.C. INTERIOR SYSTEM INC. (RESPONDENT) V. INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES, LOCAL UNION 1891 (INTERVENER). (2 EMPLOYEES).

3055-72-R: ELECTRICAL DIVISION OF THE CONSTRUCTION ASSOCIATION OF THUNDER BAY INCORPORATED (APPLICANT) V. LOCAL UNION No. 339, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (RESPONDENT) V. ELECTRICAL POWER SYSTEMS CONSTRUCTION ASSOCIATION (INTERVENER). (NO EMPLOYEES).

3059-72-R: THE PROFESSIONAL EMBALMERS' ASSOCIATION OF ONTARIO (APPLICANT) V. KELLY FUNERAL HOMES LIMITED (RESPONDENT) V. EMPLOYEE (OBJECTOR). (2 EMPLOYEES).

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3062-72-R: THE NON-ACADEMIC STAFF ASSOCIATION OF WATERLOO COUNTY (APPLICANT) V. THE WATERLOO COUNTY BOARD OF EDUCATION (RESPONDENT) V. CUSTODIANS & MAINTENANCE ASSOCIATION, WATERLOO COUNTY (INTERVENER). (212 EMPLOYEES).

3072-72-R: TEAMSTERS LOCAL UNION No. 879, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS AND WAREHOUSEMEN OF AMERICA (APPLICANT) V. DAVIES FAST FREIGHT LIMITED (RESPONDENT) V. EMPLOYEES (OBJECTORS). (7 EMPLOYEES).

3120-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837 (APPLICANT) V. GROSSI BROTHERS LTD. (RESPONDENT). (2 EMPLOYEES).

3157-72-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION 1730, DRYDEN, ONTARIO (APPLICANT) V. THE MUNICIPAL CORPORATION OF THE TOWN OF DRYDEN (RESPONDENT). (8 EMPLOYEES).

3194-72-R: TEAMSTERS LOCAL UNION No. 879, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. CROWN MOVING AND STORAGE, OPERATED BY DONALD W. MURRAY MOVERS LTD. (RESPONDENT). (22 EMPLOYEES).

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3220-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. LORNE G. BUSH (RESPONDENT). (2 EMPLOYEES).

CERTIFICATION DISMISSED SUBSEQUENT TO PRE-HEARING VOTE

1599-71-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE UNIVERSITY OF WESTERN ONTARIO (RESPONDENT).

UNIT: "ALL NON-PROFESSIONAL EMPLOYEES OF THE RESPONDENT AT THE UNIVERSITY OF WESTERN ONTARIO LIBRARIES AT LONDON, SAVE AND EXCEPT UNIT HEADS, PERSONS ABOVE THE RANK OF UNIT HEAD, PROFESSIONAL LIBRARIANS, LIBRARY PERSONNEL OFFICER, ADMINISTRATIVE ASSISTANTS, SECRETARY TO THE CHIEF LIBRARIAN, SECRETARY TO THE ASSISTANT DIRECTORS, SECRETARY TO THE LIBRARY PERSONNEL OFFICER, PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT WITH THE CANADIAN UNION OF OPERATING ENGINEERS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (356 EMPLOYEES IN THE UNIT). (ACCORDINGLY, AFTER CONSIDERING THE AGREEMENT OF THE PARTIES THE BOARD WAS OF THE OPINION THAT PERSONS IN THE DEPARTMENTAL LIBRARIES WHO CAST BALLOTS ARE ENTITLED TO HAVE THEIR BALLOTS COUNTED IN THE REPRESENTATION VOTE.). (FOR THE PURPOSES OF CLARITY THE BOARD FURTHER NOTES THE AGREEMENT OF THE PARTIES THAT PERSONS IN THE DEPARTMENTAL LIBRARIES ARE INCLUDED IN THE BARGAINING UNIT.).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		252
NUMBER OF PERSONS WHO CAST BALLOTS		236
BALLOTS SEGREGATED AND NOT COUNTED	2	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	96	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	138	

1728-71-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. MCMASTER UNIVERSITY (RESPONDENT) V. SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 532 (INTERVENER).

VOTING CONSTITUENCY: "ALL NON-PROFESSIONAL LIBRARY EMPLOYEES OF THE RESPONDENT IN HAMILTON, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, SECRETARIES TO MEMBERS OF THE ADMINISTRATIVE COMMITTEE, CLERK-TYPIST IN THE OFFICE OF THE CHIEF LIBRARIAN, CLERK IN THE OFFICE OF THE MANAGER OF THE LIBRARY BUSINESS OFFICE, THE SENIOR LIBRARY ASSISTANT IN THE HEALTH SCIENCES LIBRARY, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND PERSONS COVERED UNDER SUBSISTING COLLECTIVE AGREEMENTS WITH THE RESPONDENT AS FOLLOWS: SERVICE EMPLOYEES OPERATIONS & MAINTENANCE; SERVICE EMPLOYEES, MACHINISTS; INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 772; AND THE MCMASTER GUARDS ASSOCIATION." (236 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		140
NUMBER OF PERSONS WHO CAST BALLOTS	122	
NUMBER OF BALLOTS EXCLUDING SEGREGATED BALLOTS CAST BY PERSONS WHOSE NAMES APPEAR ON VOTERS' LIST	121	
NUMBER OF SEGREGATED BALLOTS CAST BY PERSONS WHOSE NAMES DO NOT APPEAR ON VOTERS' LIST	1	

BALLOT BOXES SEALED

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CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

2455-72-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. SYDNEY J. WEISMAN AND LAWRENCE R. SOSKIN CARRYING ON BUSINESS UNDER THE FIRM NAME AND STYLE OF EMPIRE PUBLIC HOUSE (RESPONDENT) V. EMPLOYEE (OBJECTOR).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT MANAGER, PERSONS ABOVE THE RANK OF MANAGER, AND OFFICE STAFF." (16 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		15
NUMBER OF PERSONS WHO CAST BALLOTS	15	
BALLOTS SEGREGATED AND NOT COUNTED	2	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	1	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	12	

2784-72-R: UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING & PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA (APPLICANT) V. FAHRINGER MECANICAL CONTRACTING LIMITED (RESPONDENT) V. CHATHAM CONSTRUCTION WORKERS ASSOCIATION, LOCAL NO. 53, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (INTERVENER).

UNIT: "ALL PLUMBERS AND PLUMBERS' APPRENTICES, STEAM FITTERS AND STEAM FITTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF ESSEX AND KENT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).



NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		2
NUMBER OF PERSONS WHO CAST BALLOTS	2	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	1	

2924-72-R: TEAMSTERS INTERNATIONAL UNION LOCAL 990 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. WEIDMAN BROTHERS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT THUNDER BAY, SAVE AND EXCEPT FOREMEN, THOSE ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND SALESMEN." (10 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		10
NUMBER OF PERSONS WHO CAST BALLOTS	7	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	1	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	6	

3033-72-R: GRAPHIC ARTS INTERNATIONAL UNION, LONDON, LOCAL 247 (APPLICANT) V. THE CANADA TRUST COMPANY (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS PRINTING AND STATIONERY DEPARTMENT AT 197 ADELAIDE STREET SOUTH IN LONDON, SAVE AND EXCEPT FOREMEN AND SUPERVISORS, PERSONS ABOVE THE RANK OF FOREMAN AND SUPERVISOR, OFFICE STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (11 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		11
NUMBER OF PERSONS WHO CAST BALLOTS	11	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	3	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	8	

#### APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING FEBRUARY

3046-72-R: THE WINDSOR RACEWAY SECURITY PERSONNEL ASSOCIATION (APPLICANT) V. WINDSOR RACEWAY HOLDINGS LTD. (RESPONDENT). (55 EMPLOYEES).

3146-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. CLOKE CONSTRUCTION LIMITED (RESPONDENT). (2 EMPLOYEES).

3166-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. MOHAWK HOSPITAL SERVICES INC. (RESPONDENT). (146 EMPLOYEES).

3222-72-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. PARIS PLAYGROUND EQUIPMENT LIMITED (RESPONDENT). (18 EMPLOYEES).

3233-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. WOODHOUSE CONSTRUCTION LTD. (RESPONDENT). (NO EMPLOYEES).

3249-72-R: GENERAL TRUCK DRIVERS' UNION LOCAL 938 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. COLEMAN'S MOVING & STORAGE LTD. (RESPONDENT). (18 EMPLOYEES).

3260-72-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRON WORKERS LOCAL 759 (APPLICANT) V. WESTERN IRON & METAL COMPANY LIMITED (RESPONDENT). (4 EMPLOYEES).

3298-72-R: READY-MIX BUILDING SUPPLY, HYDRO & CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS, LOCAL 230 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. HUMBER READY MIX CONCRETE LTD. (RESPONDENT). (9 EMPLOYEES).

# APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED

## OF DURING FEBRUARY

3001-72-R: ABILIO LOURENCO (APPLICANT) V. UNITED STEELWORKERS OF AMERICA (RESPONDENT) V. CRANE CARRIER CANADA LTD. (INTERVENER). (DISMISSED).

UNIT: "ALL EMPLOYEES OF CRANE CARRIER CANADA LTD. IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (58 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS'  
LIST

58

NUMBER OF PERSONS WHO CAST BALLOTS

54

NUMBER OF BALLOTS MARKED IN FAVOUR  
OF RESPONDENT

39

NUMBER OF BALLOTS MARKED AGAINST  
RESPONDENT

15

3003-72-R: MR. KENNETH H. KILREA (APPLICANT) V. LOCAL 197 OF THE HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INT. UNION A.F.L. C.I.O. C.L.C. (RESPONDENT). (GRANTED).

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NUMBER OF NAMES OF PERSONS ON VOTERS'  
LIST

NUMBER OF PERSONS WHO CAST BALLOTS

NUMBER OF BALLOTS MARKED IN FAVOUR

OF RESPONDENT

NUMBER OF BALLOTS MARKED AGAINST

RESPONDENT

7

7

0

7

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ONTARIO LABOUR RELATIONS BOARD



ONTARIO LABOUR RELATIONS BOARD REPORTS

A MONTHLY SERIES OF DECISIONS FROM THE

ONTARIO LABOUR RELATIONS BOARD

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12. FOR THE PURPOSES OF CLARITY, THE BOARD DECLARES THAT CARPENTERS EMPLOYED IN THE SHOP ARE NOT INCLUDED IN THE BARGAINING UNIT.

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14. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

3074-72-U: EVANGELOS TZAGADOURIS (COMPLAINANT) V. AMALGAMATED TRANSIT UNION (RESPONDENT).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS E. BOYER AND H.J.F. ADE.

DECISION OF THE BOARD: MARCH 1, 1973.

1. THIS IS A COMPLAINT UNDER SECTION 79 OF THE LABOUR RELATIONS ACT IN WHICH IT IS ALLEGED THAT THE RESPONDENT TRADE UNION DEAL WITH THE COMPLAINANT CONTRARY TO SECTION 60 OF THE LABOUR RELATIONS ACT. A FIELD OFFICER WAS APPOINTED AND HE HAS NOW REPORTED TO THE BOARD. INCLUDED IN THAT REPORT WERE STATEMENTS FROM THE COMPLAINANT, THE RESPONDENT UNION AND THE TORONTO TRANSIT COMMISSION, THE FORMER EMPLOYER OF THE COMPLAINANT. THE FIELD OFFICER HAS REPORTED TO THE BOARD THAT THE COMPLAINANT WAS APPRISED OF THE SUBSTANCE OF THE STATEMENTS OBTAINED FROM THE RESPONDENT AND THE TORONTO TRANSIT COMMISSION. THE FIELD OFFICER FURTHER REPORTED THAT THE COMPLAINANT DID NOT CHALLENGE EITHER OF THE STATEMENTS.

2. IT WOULD APPEAR THAT THE COMPLAINANT, AFTER SEVERAL BRIEF PERIODS OF TEMPORARY WORK WITH THE COMMISSION AS A CASUAL LABOURER, WAS MADE A REGULAR EMPLOYEE ON FEBRUARY 23, 1969 IN THE CAPACITY OF LABOURER. IN DECEMBER OF 1971 HE SUFFERED A BACK INJURY WHILE AT WORK AND THIS CLAIM WAS ACCEPTED BY THE WORKMEN'S COMPENSATION BOARD. UNTIL THE MIDDLE OF MAY, 1972 HE WAS THEN EMPLOYED ON AN IRREGULAR BASIS AND WHEN HE WORKED HE WAS EMPLOYED ON LIGHT DUTIES AND NOT IN HIS REGULAR CAPACITY AS A TRACKMAN-LABOURER. HE RETURNED TO HIS REGULAR JOB IN THE MIDDLE OF MAY, 1972 BUT IN SEPTEMBER OF 1972 HE REPORTED SICK ONCE AGAIN WITH BACK PROBLEMS. SUBSEQUENTLY, THE COMMISSION MEDICAL OFFICER RULED THAT THE COMPLAINANT WAS PERMANENTLY UNFIT TO PERFORM THE DUTIES OF A LABOURER BUT COULD DO LIGHT WORK. FOR A TIME THEREAFTER HE WAS EMPLOYED ON LIGHT DUTIES BUT WAS SUBSEQUENTLY RELEASED ON NOVEMBER 24, 1972 ON THE GROUND THAT THERE WAS NO SUITABLE EMPLOYMENT FOR HIM.

3. WHILE THE COMPLAINANT CONCEDES THAT HE IS UNFIT TO PERFORM HIS DUTIES AS A TRACKMAN, IT WAS HIS OPINION THAT THE COMMISSION SHOULD PROVIDE OTHER WORK FOR HIM. CONSEQUENTLY, HE GOT IN TOUCH WITH THE BUSINESS AGENT OF THE RESPONDENT RESPONSIBLE FOR ALL APPEALS FOR REINSTATEMENT. THE BUSINESS AGENT INVOLVED HIMSELF IN THE MATTER AND ATTEMPTED TO HAVE THE COMMISSION FIND WORK FOR THE EMPLOYEE. DISCUSSIONS WERE HELD WITH VARIOUS COMMISSION OFFICIALS BUT THE RESPONDENT WAS SUBSEQUENTLY

ADVISED THAT NO WORK COULD BE PROVIDED. ANOTHER UNION OFFICIAL, MR. KELLY, DESCRIBED AS A BOARD MEMBER OF DIVISION 113 OF THE RESPONDENT UNION, WAS KEPT APPRISED OF THE COMPLAINANT'S CONDITION AND THE PROBLEMS INVOLVED IN PLACING THE COMPLAINANT ON LIGHT DUTIES. FOLLOWING THE UNSUCCESSFUL ATTEMPT OF THE BUSINESS AGENT TO HAVE THE COMMISSION FIND OTHER WORK FOR THE COMPLAINANT, THE COMPLAINANT REQUESTED A MEETING WITH THE PRESIDENT OF DIVISION 113 TO DISCUSS HIS CASE. AT THAT MEETING SEVERAL TELEPHONE CALLS WERE MADE TO MR. KELLY AND ALSO TO THE SUPERINTENDENT OF THE COMPLAINANT'S SECTION. SUBSEQUENT TO THESE CALLS IT WAS RECOMMENDED BY THE SUPERINTENDENT OF THE SECTION AND THE ASSISTANT MANAGER OF THE DEPARTMENT THAT WORK SHOULD BE MADE AVAILABLE FOR THE COMPLAINANT UNTIL AFTER THE CHRISTMAS SEASON. HOWEVER, THIS RECOMMENDATION WAS REJECTED BY THE DIRECTOR OF INDUSTRIAL RELATIONS ON THE GROUNDS THAT THE MATTER HAD ALREADY BEEN DEALT WITH BY HIM THROUGH THE BUSINESS AGENT. IT WOULD APPEAR THAT THE RESPONDENT UNION DECLINED TO FILE A GRIEVANCE ON HIS BEHALF AT THIS POINT BUT HE WAS INFORMED THAT HE COULD APPEAL TO THE EXECUTIVE BOARD OF DIVISION 113 OF THE RESPONDENT UNION BUT THAT THE APPEAL WOULD BE WITH RESPECT TO REINSTATEMENT TO HIS FORMER JOB FOR WHICH JOB HE HAD BEEN CERTIFIED AS MEDICALLY UNFIT. THE COMPLAINANT APPEARS NOT TO HAVE LAUNCHED SUCH AN APPEAL.

4. IT IS THE COMPLAINANT'S CONTENTION IN THIS CASE THAT THE UNION SHOULD HAVE LAUNCHED A GRIEVANCE ON HIS BEHALF. IN ORDER TO SUCCEED ON THIS CLAIM THE COMPLAINANT MUST ESTABLISH THAT THE RESPONDENT UNION ACTED CONTRARY TO SECTION 60 OF THE LABOUR RELATIONS ACT, THAT IS, IN A MANNER THAT WAS ARBITRARY, DISCRIMINATORY OR IN BAD FAITH. IN OUR VIEW, BASED ON THE MATERIALS BEFORE US, THERE IS NO EVIDENCE TO SHOW THAT THE UNION'S DECISION NOT TO FILE A GRIEVANCE WAS CONTRARY TO SECTION 60 OF THE ACT. QUITE CLEARLY, THERE IS NO POINT IN FILING A GRIEVANCE CLAIMING REINSTATEMENT TO A JOB WHICH THE MEDICAL OFFICER OF THE COMMISSION HAD RULED THE COMPLAINANT WAS MEDICALLY UNFIT TO PERFORM. FURTHERMORE, THERE WAS NO CLAIM BY THE COMPLAINANT THAT HE WAS ABLE TO PERFORM THE DUTIES OF TRACKMAN.

5. WITH RESPECT TO HIS CLAIM THAT THE COMMISSION SHOULD HAVE PROVIDED OTHER WORK, BOTH THE RESPONDENT UNION AND THE COMMISSION APPEAR TO AGREE THAT THERE IS A LONG-STANDING PRACTICE TO PLACE LONG SERVICE EMPLOYEES WHOSE HEALTH HAS DETERIORATED IN POSITIONS INVOLVING LIGHT PHYSICAL EFFORT. HOWEVER, THIS PRACTICE DOES NOT PERTAIN TO EMPLOYEES WITH LESS THAN FIVE YEARS SERVICE. SUCH EMPLOYEES ARE AUTOMATICALLY RELEASED FROM THEIR JOBS IF CERTIFIED AS BEING PERMANENTLY UNFIT TO PERFORM THE DUTIES FOR WHICH THEY WERE HIRED AND PROVIDED NO ALTERNATIVE WORK WAS AVAILABLE AT THE TIME OF DISQUALIFICATION. THE COMPLAINANT DID NOT HAVE THE NECESSARY FIVE YEARS SENIORITY AS A REGULAR EMPLOYEE. THE RESPONDENT UNION FURTHER POINTED OUT THAT EVEN IF HE HAD THE NECESSARY FIVE YEARS OF SERVICE, THERE WERE ONLY TWO CATEGORIES IN WHICH HE COULD CONCEIVABLY QUALIFY FOR LIGHT DUTY WORK, NAMELY AS A SUBWAY COLLECTOR OR AS A WATCHMAN. WITH RESPECT TO THE POSITION OF SUBWAY COLLECTOR, THE UNION FELT THAT HE COULD NOT QUALIFY BECAUSE OF A LANGUAGE PROBLEM. WITH RESPECT TO THE POSITION OF WATCHMAN, THE UNION POINTED OUT THAT AT THE PRESENT TIME

THERE WERE TWO MEN WITH 15 OR MORE YEARS OF SERVICE WAITING FOR A JOB OPENING. AS A RESULT, IT WAS THE UNION'S POSITION THAT NO POINT WOULD BE SERVED IN FILING THE GRIEVANCE. THE COMMISSION, OF COURSE, WAS OF THE SAME OPINION.

6. HAVING REGARD TO THE ABOVE CONSIDERATIONS, WE ARE UNABLE TO SEE WHAT ELSE THE RESPONDENT UNION COULD HAVE DONE IN THEIR REPRESENTATION OF THE COMPLAINANT. CERTAINLY THERE IS NOTHING TO SUGGEST THAT IN ARRIVING AT THEIR DECISION NOT TO FILE A GRIEVANCE THEY ACTED IN AN ARBITRARY OR DISCRIMINATORY MANNER OR IN BAD FAITH. IN THESE CIRCUMSTANCES, WE ARE OF THE OPINION THAT THIS COMPLAINT SHOULD BE DISMISSED. IF THE COMPLAINANT IS OF THE OPINION THAT THE FACTS ARE NOT AS SET OUT ABOVE OR THAT THE BOARD HAS ERRED IN ANY OTHER MATTER, IT IS ALWAYS OPEN TO HIM TO REQUEST THE BOARD TO REVIEW ITS DECISION UNDER THE PROVISIONS OF SECTION 95(1) OF THE LABOUR RELATIONS ACT.

7. THE COMPLAINT IS DISMISSED.

2938-72-R: LUMBER AND SAWMILL WORKERS' UNION, LOCAL 2995 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. SPRUCE-DALE LUMBER COMPANY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS D. B. ARCHER AND W. H. WIGHTMAN.

APPEARANCES AT THE HEARING: L. C. ARNOLD FOR THE APPLICANT; F. R. VON VEH, E. ROVET AND J. DAVIS FOR THE RESPONDENT; MICHAEL GORDON FOR THE OBJECTORS.

DECISION OF THE BOARD: MARCH 5, 1972.

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2. AT THE HEARING OF THE INSTANT APPLICATION ON DECEMBER 20, 1972, THE PARTIES AGREED THAT "ALL EMPLOYEES OF THE RESPONDENT AT ITS SAWMILL, PLANING MILL AND YARD OPERATIONS AT MATTICE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD" WOULD CONSTITUTE AN APPROPRIATE UNIT FOR COLLECTIVE BARGAINING.

3. THE BOARD AT THE HEARING THEREUPON ADVISED THE PARTIES THAT THE RESPONDENT HAD FILED A LIST CONTAINING THE NAMES OF 30 PERSONS, ALL OF WHOM WERE ON SCHEDULE "A", THAT IS, FULL-TIME EMPLOYEES IN THE EMPLOY OF THE RESPONDENT AS OF NOVEMBER 30, 1972, THE DATE OF THE MAKING OF THE INSTANT APPLICATION. THE REPRESENTATIVE OF THE APPLICANT AT THE HEARING CHALLENGED THE LIST FILED BY THE RESPONDENT. THE BOARD, FOLLOWING ITS USUAL PRACTICE IN SUCH CIRCUMSTANCES, APPOINTED AN EXAMINER. MORE SPECIFICALLY, BY A DECISION DATED DECEMBER 20, 1972, THE BOARD AUTHORIZED MR. J. A. MACDONALD, EXAMINER, "TO INQUIRE INTO AND REPORT TO THE BOARD ON



THE COMPOSITION OF THE BARGAINING UNIT AND MORE PARTICULARLY ON THE LIST OF EMPLOYEES FILED BY THE RESPONDENT IN CONNECTION WITH THIS APPLICATION".

4. SUBSEQUENT TO HIS APPOINTMENT, MR. MACDONALD BY LETTER DATED DECEMBER 27, 1972, ARRANGED A MEETING OF THE PARTIES FOR 10:00 A.M. ON WEDNESDAY, JANUARY 17, 1973 TO CONTINUE, IF NECESSARY, ON THURSDAY, JANUARY 18, 1973, ALSO AT 10:00 A.M. ON THE PREMISES OF THE RESPONDENT AT MATTICE. UPON EXAMINING THE PAYROLL AND EMPLOYMENT RECORDS OF THE RESPONDENT, THE EXAMINER FOUND THAT THE SCHEDULE "A" FILED BY THE REPRESENTATIVE OF THE RESPONDENT CORRESPONDED WITH THE RESPONDENT'S RECORDS. THE EXAMINER FURTHER FOUND THAT THERE WERE TWO PERSONS ON THE RESPONDENT'S RECORDS WHO HAD NOT BEEN INCLUDED ON THE LIST OF EMPLOYEES FILED WITH THE BOARD BY THE RESPONDENT. THE EXAMINER ADVISED THE REPRESENTATIVES OF THE PARTIES AT THE MEETING OF HIS FINDINGS. THE RESPONDENT STATED THAT THE TWO PERSONS CONCERNED WERE EMPLOYED ON A PART-TIME BASIS. COUNSEL FOR THE RESPONDENT TOOK THE POSITION BEFORE THE EXAMINER THAT THE TWO PART-TIME PERSONS SHOULD BE INCLUDED IN THE BARGAINING UNIT FOR PURPOSES OF THE COUNT SINCE NO EXCLUSION WAS MADE FOR "PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK" IN THE UNIT AGREED UPON BY THE APPLICANT AND THE RESPONDENT AT THE HEARING BEFORE THE BOARD. THE POSITION TAKEN BY THE REPRESENTATIVE OF THE APPLICANT BEFORE THE EXAMINER WAS THAT BECAUSE OF THE FAILURE OF THE RESPONDENT TO INCLUDE THE TWO PART-TIME EMPLOYEES ON SCHEDULE "B" AS PART OF THE LIST OF EMPLOYEES IN THE BARGAINING UNIT APPLIED FOR BY THE APPLICANT, THE APPLICANT WAS UNAWARE AT THE HEARING BEFORE THE BOARD THAT THE RESPONDENT HAD IN ITS EMPLOY "PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK". THE POSITION OF THE REPRESENTATIVE OF THE APPLICANT WAS THAT HAD HE HAD THIS INFORMATION AT THE TIME OF THE BOARD HEARING HE WOULD HAVE ASKED FOR THE EXCLUSION OF PART-TIME EMPLOYEES AND THAT SINCE HE ONLY BECAME AWARE THAT THE RESPONDENT HAD PART-TIME PERSONS IN ITS EMPLOY AT THE HEARING BEFORE THE EXAMINER, IT WAS HIS FIRST OPPORTUNITY TO REQUEST THE EXCLUSION OF "PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK". THE FINDINGS OF THE EXAMINER WITH REGARD TO THE RESPONDENT'S EMPLOYEES AND THE FOREGOING REPRESENTATIONS WITH RESPECT TO THE RESPONDENT'S PART-TIME EMPLOYEES ARE CONTAINED IN THE REPORT OF THE EXAMINER DATED FEBRUARY 8, 1973. BOTH COUNSEL FOR THE RESPONDENT AND THE GROUP OF EMPLOYEES REQUESTED A HEARING FOR THE PURPOSE OF MAKING REPRESENTATIONS ON THE EXAMINER'S REPORT. THE BOARD ACCORDINGLY LISTED THE APPLICATION FOR CONTINUATION OF HEARING FOR THE PURPOSES OF ENTERTAINING THE REPRESENTATIONS OF THE PARTIES ON THE REPORT AND MORE PARTICULARLY THE STATUS OF THE PERSONS IN THE EMPLOY OF THE RESPONDENT WHO ARE REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK.

5. AT THE HEARING ON THE REPORT OF THE EXAMINER ON MARCH 5, 1973, COUNSEL FOR THE RESPONDENT ELABORATED UPON THE SUBMISSIONS THAT HE HAD MADE BEFORE THE EXAMINER AND THOSE CONTAINED IN HIS LETTERS TO THE BOARD. COUNSEL FOR THE GROUP OF EMPLOYEES SUPPORTED THE POSITION OF COUNSEL FOR THE RESPONDENT. COUNSEL FOR THE APPLICANT REITERATED THE POSITION TAKEN BY THE APPLICANT BEFORE THE EXAMINER.

6. SINCE THE RESPONDENT DID NOT FILE ON SCHEDULE "B" THE NAMES OF ITS EMPLOYEES WHO ARE "PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK", AND NEITHER THE APPLICANT NOR THE RESPONDENT MADE ANY REFERENCE TO THIS CLASSIFICATION IN THE APPLICATION OR REPLY, THE QUESTION AS TO WHETHER EITHER OF THE PARTIES WANTED THE INCLUSION OR EXCLUSION OF PART-TIME PERSONS FROM ANY BARGAINING UNIT WHICH THE BOARD FINDS TO BE APPROPRIATE WAS NOT RAISED. HAD THE BOARD BEEN AWARE AT THE ORIGINAL HEARING OF THE APPLICATION THAT THE RESPONDENT HAD PART-TIME PERSONS IN ITS EMPLOY, THE BOARD WOULD HAVE INQUIRED OF THE PARTIES AS TO WHETHER THEY WERE ASKING FOR THE INCLUSION OR EXCLUSION OF THIS CLASSIFICATION. THE LONG-STANDING PRACTICE OF THE BOARD IS THAT WHERE AN EMPLOYER HAS PART-TIME PERSONS IN ITS EMPLOY, OR A HISTORY OF EMPLOYING THEM, THE BOARD WILL EXCLUDE THIS CLASSIFICATION FROM THE BARGAINING UNIT ON THE REQUEST OF EITHER PARTY. SINCE THE BOARD WAS UNAWARE AT THE ORIGINAL HEARING THAT THE RESPONDENT DID HAVE PART-TIME PERSONS IN ITS EMPLOY THE BOARD MADE NO INQUIRY OF THE PARTIES AS TO WHETHER OR NOT THE APPLICANT AND/OR THE RESPONDENT WISHED TO HAVE THIS CLASSIFICATION EXCLUDED FROM THE BARGAINING UNIT. FURTHER, SINCE THE PRESENCE OF THIS CLASSIFICATION ONLY BECAME POSITIVE KNOWLEDGE TO THE APPLICANT AT THE MEETING WITH THE EXAMINER, THE BOARD IS OF THE OPINION THAT THE APPLICANT SHOULD NOT BE DEPRIVED OF THE OPPORTUNITY IT WOULD HAVE HAD AT THE ORIGINAL HEARING, HAD IT HAD THE SAME KNOWLEDGE AT THAT TIME, TO REQUEST THE EXCLUSION OF "PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK". ACCORDINGLY, NOTWITHSTANDING THAT NEITHER THE APPLICANT NOR THE RESPONDENT PROPOSED THE EXCLUSION OF THIS CLASSIFICATION IN THEIR RESPECTIVE PROPOSED BARGAINING UNITS AND THE FACT THAT AT THE HEARING THEY AGREED TO A DESCRIPTION OF A BARGAINING UNIT WHICH DID NOT EXCLUDE PART-TIME EMPLOYEES, THE BOARD IS PREPARED TO ACCEDE TO THE REQUEST OF THE APPLICANT THAT "PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK" BE EXCLUDED FROM ANY BARGAINING UNIT. OUR DECISION IN THIS REGARD IS ENTIRELY IN ACCORD WITH THE BOARD'S DECISION IN THE IRWIN TOY LIMITED CASE, OLRB M.R. DECEMBER 1970 P. 912. THE FACTS IN THAT CASE ARE SUBSTANTIALLY THE SAME AS THOSE BEFORE THE BOARD IN THE INSTANT CASE, EXCEPT THAT IN THE EARLIER APPLICATION THE BOARD WAS DEALING WITH THE CLASSIFICATION "STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD".

7. THE BOARD THEREFORE FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT ITS SAWMILL, PLANING MILL AND YARD OPERATIONS AT MATTICE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

8. BASED ON THE LIST FILED BY THE RESPONDENT AND THE EXAMINER'S REPORT, THERE WERE 30 EMPLOYEES OF THE RESPONDENT IN THE ABOVE DESCRIBED BARGAINING UNIT WHO ARE INCLUDED ON THE RESPONDENT'S LIST OF EMPLOYEES FOR PURPOSES OF THE COUNT. THE APPLICANT FILED EVIDENCE OF MEMBERSHIP FOR 19 PERSONS, ALL OF WHOSE NAMES CORRESPOND WITH NAMES APPEARING ON THE RESPONDENT'S LIST. ON A LIST OF 30, THE APPLICANT REQUIRES EVIDENCE OF MEMBERSHIP FOR 20 PERSONS IN ORDER TO HAVE THE 65 PER CENT REQUIRED

FOR OUTRIGHT CERTIFICATION. IN OTHER WORDS, THE APPLICANT ONLY HAS SUFFICIENT EVIDENCE OF MEMBERSHIP SO AS TO ENTITLE IT TO THE TAKING OF A REPRESENTATION VOTE. THERE WERE FILED WITH THE BOARD 17 STATEMENTS OF DESIRE EXPRESSING OPPOSITION TO THE APPLICATION SIGNED BY PERSONS PURPORTING TO BE EMPLOYEES OF THE RESPONDENT, 14 OF WHICH ARE WRITTEN IN THE FRENCH LANGUAGE. SIX OF THE PERSONS SIGNING THE STATEMENTS OF DESIRE ARE CLAIMED IN MEMBERSHIP BY THE APPLICANT. IF THE BOARD WERE TO GIVE WEIGHT TO THE SAID STATEMENTS THE APPLICANT WOULD HAVE UNQUALIFIED EVIDENCE OF MEMBERSHIP FOR LESS THAN THE 65 PER CENT REQUIRED FOR OUTRIGHT CERTIFICATION. HOWEVER, SINCE THE BEST RESULT THAT FLOWS FROM THE BOARD GIVING WEIGHT TO THE STATEMENTS OF DESIRE WOULD BE THE DIRECTING OF A REPRESENTATION VOTE, AND THE APPLICANT IS ONLY IN A VOTE POSITION, NO PURPOSE WOULD BE SERVED BY MAKING ANY INQUIRIES WITH RESPECT TO THE ORIGINATION AND CIRCULATION OF THE STATEMENTS OF DESIRE.

9. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN THIRTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON DECEMBER 12, 1972, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

10. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

11. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BE REPRESENTED BY THE APPLICANT IN THEIR EMPLOYMENT RELATIONS WITH THE RESPONDENT.

12. THERE IS COMMON AGREEMENT AMONG THE REPRESENTATIVES OF THE PARTIES THAT THE VAST MAJORITY, IF NOT ALL, OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ARE FRENCH-SPEAKING CANADIANS WITH LIMITED, IF ANY, ABILITY TO EITHER SPEAK OR READ IN THE ENGLISH LANGUAGE. COUNSEL FOR THE RESPONDENT SUBMITTED THAT, IN THE EVENT THAT THE BOARD SHOULD DIRECT THE TAKING OF A REPRESENTATION VOTE, HAVING REGARD TO THE FOREGOING CONSIDERATIONS AND THE FACT THAT FRENCH IS ONE OF THE TWO OFFICIAL LANGUAGES IN CANADA, THE NOTICES OF SUCH VOTE AND THE BALLOTS SHOULD BE IN THE FRENCH AS WELL AS THE ENGLISH LANGUAGES. THE SUBMISSIONS OF COUNSEL FOR THE RESPONDENT WERE SUPPORTED BY THE REPRESENTATIVE OF THE APPLICANT AND COUNSEL FOR THE GROUP OF EMPLOYEES. WE FIND MERIT IN THE ABOVE SUBMISSIONS AND ACCORDINGLY DIRECT THAT THE NOTICES OF THE TAKING OF THE VOTE BE POSTED IN BOTH THE ENGLISH AND FRENCH LANGUAGES AND THAT THE BALLOTS USED IN THE TAKING OF THE VOTE BE AVAILABLE IN BOTH THE ENGLISH AND FRENCH LANGUAGES.

13. THE MATTER IS REFERRED TO THE REGISTRAR.



488-71-R: THE GENERAL CONTRACTORS' SECTION OF THE TORONTO CONSTRUCTION ASSOCIATION (APPLICANT) v. THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNION #793 (RESPONDENT) v. THE ONTARIO ERECTORS ASSOCIATION (INTERVENER #1) v. THE METROPOLITAN TORONTO SEWER AND WATERMAIN CONTRACTORS ASSOCIATION (INTERVENER #2) v. ONTARIO ROAD BUILDERS ASSOCIATION (INTERVENER #3) v. THE METROPOLITAN TORONTO ROAD BUILDERS' ASSOCIATION (INTERVENER #4) v. HEAVY CONSTRUCTION ASSOCIATION OF TORONTO (INTERVENER #5) v. TORONTO AND DISTRICT EXCAVATORS ASSOCIATION (INTERVENER #6) v. CRANE RENTAL ASSOCIATION OF ONTARIO (INTERVENER #6).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: B. W. BINNING, S. BERNARDO AND G. A. BECIGNEUL FOR THE APPLICANT; H. A. HERRON FOR THE RESPONDENT; R. B. CUMINE AND S. C. ECCLES FOR INTERVENER #1; B. W. BINNING, S. BERNARDO AND G. A. BECIGNEUL FOR INTERVENERS #2, #3, #4 AND #5; R. D. PERKINS AND WILLIAM WHITE FOR INTERVENERS #6 AND #7; F. G. HAMILTON AND J. THOMSON FOR PIGOTT CONSTRUCTION COMPANY LIMITED.

DECISION OF THE BOARD: MARCH 5, 1973.

1. AT THE ORIGINAL HEARING WITH RESPECT TO THE INSTANT APPLICATION COUNSEL FOR INTERVENER #1 SUBMITTED THAT THE EMPLOYERS REPRESENTED BY THE ONTARIO ERECTORS ASSOCIATION WERE AN IDENTIFIABLE GROUP WITH A LONG HISTORY OF BARGAINING WITH THE RESPONDENT SEPARATE AND APART FROM OTHER EMPLOYERS THROUGHOUT THE PROVINCE OF ONTARIO. FOR THIS REASON, COUNSEL SUBMITTED THAT THE MEMBERS OF THE ONTARIO ERECTORS ASSOCIATION SHOULD NOT BE INCLUDED IN ANY BARGAINING UNIT FOUND TO BE APPROPRIATE BY THE BOARD.

2. THE REPRESENTATIVE OF THE RESPONDENT SUBMITTED THAT THE RESPONDENT ALSO HAD A LONG HISTORY OF COLLECTIVE BARGAINING WITH THE CRANE RENTAL ASSOCIATION OF ONTARIO AND THE TORONTO AND DISTRICT EXCAVATORS ASSOCIATION AND THAT HAVING REGARD TO THIS HISTORY, THERE WAS SOME QUESTION IN HIS MIND AS TO WHETHER THE EMPLOYER MEMBERS OF THESE TWO ASSOCIATIONS SHOULD BE INCLUDED IN ANY UNIT OF EMPLOYERS FOUND TO BE APPROPRIATE BY THE BOARD.

3. A SECOND HEARING ON THE APPLICATION WAS HELD SUBSEQUENT TO THE EMPLOYER DATE FIXED IN THIS MATTER. IN VIEW OF THE REPRESENTATIONS MADE BY THE RESPONDENT, THE CRANE RENTAL ASSOCIATION OF ONTARIO AND THE TORONTO AND DISTRICT EXCAVATORS ASSOCIATION WERE GIVEN NOTICE OF THE HEARING AS WERE THE INDIVIDUAL EMPLOYERS FALLING WITHIN THE PURVIEW OF THE UNIT OF EMPLOYERS APPLIED FOR BY THE APPLICANT WHO HAD FILED INTERVENTIONS. THE ABOVE TWO NAMED ASSOCIATIONS WERE REPRESENTED AT THE HEARING AND WERE JOINED AS PARTIES TO THE PROCEEDINGS.

4. AT THE SAID HEARING THE BOARD ENTERTAINED THE REPRESENTATIONS OF ALL THE PARTIES IN ATTENDANCE ON THE ISSUE OF THE APPROPRIATENESS OF THE UNIT OF EMPLOYERS. WE WOULD MENTION HERE THAT FOLLOWING THE INITIAL

HEARING, THE BOARD ISSUED AN INTERIM DECISION DATED NOVEMBER 25, 1971, IN WHICH INTER ALIA IT FOUND THAT THE APPROPRIATE UNIT WOULD BE CONFINED TO THE INDUSTRIAL, COMMERCIAL AND INSTITUTIONAL SECTOR. AT THE SECOND HEARING COUNSEL FOR THE APPLICANT AND COUNSEL FOR INTERVENER #1 REQUESTED THAT ALL EMPLOYERS OF EMPLOYEES REGULARLY EMPLOYED THROUGHOUT THE PROVINCE OF ONTARIO ENGAGED IN THE ERECTION OF MECHANICAL EQUIPMENT AND STRUCTURAL STEEL SHOULD BE EXCLUDED FROM ANY UNIT OF EMPLOYERS FOUND TO BE APPROPRIATE BY THE BOARD AND FURTHER SUBMITTED THAT THE BOARD HAD THE JURISDICTION UNDER SECTION 114 OF THE ACT TO MAKE SUCH AN EXCLUSION. THE HEARING WAS ADJOURNED TO AFFORD ALL PARTIES AN OPPORTUNITY TO ASSESS THEIR RESPECTIVE POSITIONS IN LIGHT OF THE REQUESTED EXCLUSION MADE BY THE APPLICANT AND INTERVENER #1.

5. AT THE THIRD HEARING ALL PARTIES WERE IN AGREEMENT THAT THE APPROPRIATE UNIT OF EMPLOYERS IN THE INSTANT CASE SHOULD BE DESCRIBED IN TERMS OF ALL EMPLOYERS OF OPERATING ENGINEERS FOR WHOM THE RESPONDENT HAS BARGAINING RIGHTS IN THE GEOGRAPHIC AREA PROPOSED BY THE APPLICANT. AS STATED ABOVE, THE BOARD HAD ALREADY DETERMINED THAT ANY UNIT SHOULD BE CONFINED TO THE INDUSTRIAL, COMMERCIAL AND INSTITUTIONAL SECTOR. COUNSEL FOR THE APPLICANT, WHO ALSO REPRESENTS INTERVENERS #2, #3, #4 AND #5, THE REPRESENTATIVE OF THE RESPONDENT AND COUNSEL FOR INTERVENER #1 ALL AGREED THAT ALL EMPLOYERS OF EMPLOYEES REGULARLY EMPLOYED THROUGHOUT THE PROVINCE OF ONTARIO IN THE ERECTION OF MECHANICAL EQUIPMENT AND STRUCTURAL STEEL SHOULD BE EXCLUDED FROM THE SAID UNIT. COUNSEL FOR INTERVENERS #6 AND #7 AGREED WITH THE SUBMISSIONS OF THE OTHER PARTIES THAT THE BOARD HAD THE JURISDICTION TO MAKE THE ABOVE EXCLUSION UNDER SECTION 114 OF THE ACT BUT MADE NO REPRESENTATIONS AS TO WHETHER, IN THE CIRCUMSTANCES OF THE INSTANT CASE, THE BOARD IN THE EXERCISE OF ITS DISCRETION SHOULD MAKE THE REQUESTED EXCLUSION FROM THE BARGAINING UNIT.

6. COUNSEL FOR INTERVENERS #6 AND #7, HOWEVER, SUBMITS THAT THE APPLICANT, THE GENERAL CONTRACTORS' SECTION OF THE TORONTO CONSTRUCTION ASSOCIATION, IS NOT AN "EMPLOYERS' ORGANIZATION" WITHIN THE MEANING OF SECTION 106(D) OF THE ACT WHICH CAN BE ACCREDITED, BUT RATHER THAT ONLY THE TORONTO CONSTRUCTION ASSOCIATION FALLS WITHIN THE PURVIEW OF THE DEFINITION. COUNSEL FURTHER SUBMITS THAT SINCE BY THE "EMPLOYER AUTHORIZATION" FORMS FILED BY THE APPLICANT IN SUPPORT OF ITS APPLICATION THE INDIVIDUAL EMPLOYERS CONCERNED AUTHORIZED THE GENERAL CONTRACTORS' SECTION OF THE TORONTO CONSTRUCTION ASSOCIATION TO BE THEIR AGENT IN COLLECTIVE BARGAINING WITH THE RESPONDENT, THE BOARD SHOULD NOT GIVE ANY WEIGHT TO THE EVIDENCE OF REPRESENTATION FILED BY THE APPLICANT.

7. FOR THE REASONS GIVEN IN PARAGRAPH 2 OF THE BOARD'S DECISION DATED NOVEMBER 25, 1971 IN THE APPLICATION FOR ACCREDITATION MADE BY THE SAME APPLICANT IN THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS' LOCAL UNION NUMBER 721 CASE OLRB M.R. NOVEMBER 1971 P. 719, THE BOARD IS SATISFIED THAT THE APPLICANT IS AN EMPLOYERS' ORGANIZATION WITHIN THE MEANING OF SECTION 106(D) OF THE ACT AND THAT THE FORM OF "EMPLOYER AUTHORIZATIONS" SUBMITTED IN SUPPORT OF THE INSTANT APPLICATION IS ACCEPTABLE EVIDENCE OF REPRESENTATION IN ACCORDANCE WITH

SECTION 96 OF THE BOARD'S RULES OF PROCEDURE. THE BOARD THEREFORE REJECTS THE ABOVE SUBMISSIONS OF COUNSEL FOR INTERVENERS #6 AND #7.

8. COUNSEL FOR INTERVENERS #6 AND #7 FURTHER SUBMITS THAT BY VIRTUE OF BY-LAW No. 3 OF THE TORONTO AND DISTRICT EXCAVATORS ASSOCIATION, WHICH COUNSEL ADVISED THE BOARD WAS ADOPTED AT A MEETING OF THE ASSOCIATION HELD ON FEBRUARY 16, 1971, THE EMPLOYER MEMBERS OF THE ASSOCIATION, PRIOR TO THE MAKING OF THE INSTANT APPLICATION, HAD ALREADY AUTHORIZED THE ASSOCIATION TO REPRESENT THEM IN COLLECTIVE BARGAINING WITH THE RESPONDENT. FOR THIS REASON COUNSEL ARGUES THAT THE SAME EMPLOYERS COULD NOT AUTHORIZE THE APPLICANT TO BE THEIR BARGAINING AGENT FOR PURPOSES OF THE INSTANT APPLICATION. THE SAID BY-LAW No. 3 READS AS FOLLOWS:

IT SHALL BE THE DUTY OF THE ASSOCIATION TO REPRESENT ALL MEMBERS OF THE ASSOCIATION AND ANY OTHER PERSON, WHO THE ASSOCIATION MAY BE ENTITLED TO REPRESENT IN ANY MATTERS PERTAINING TO THE EXCAVATING INDUSTRY AS ALLIED TO THE CONSTRUCTION INDUSTRY, IN THE MUNICIPALITY OF METROPOLITAN TORONTO GEOGRAPHIC AREA AND TO NEGOTIATE ON THEIR BEHALF OR AUTHORIZE OTHER ASSOCIATIONS OR ORGANIZATIONS TO NEGOTIATE ON THEIR BEHALF AND ENTER INTO SUCH TRADE OR OTHER AGREEMENTS RESPECTING WAGES, HOURS OF WORK AND WORKING CONDITIONS AND ALL OTHER MATTERS AS MAY APPEAR TO BE IN THE BEST INTERESTS OF THE EXCAVATING INDUSTRY.

TO PERMIT THE ASSOCIATION TO BECOME AN ACCREDITED ORGANIZATION UNDER THE LABOUR RELATIONS ACT, EACH ACTIVE MEMBER OF THE ASSOCIATION SHALL SIGN A PROXY WHICH AUTHORIZES THE ASSOCIATION TO NEGOTIATE AND ADMINISTER THE COLLECTIVE AGREEMENTS ON HIS BEHALF TO ENABLE THE ASSOCIATION TO DISCHARGE THE RESPONSIBILITIES OF AN ACCREDITED BARGAINING AGENT.

9. AS WE READ THE BY-LAW, IT SIMPLY PROVIDES THAT EACH ACTIVE MEMBER OF THE ASSOCIATION UNDERTOOK TO SIGN A PROXY AUTHORIZING THE ASSOCIATION TO NEGOTIATE AND ADMINISTER COLLECTIVE AGREEMENTS ON HIS BEHALF TO ENABLE THE ASSOCIATION TO DISCHARGE THE RESPONSIBILITIES OF AN ACCREDITED BARGAINING AGENT. THERE IS NO EVIDENCE BEFORE THE BOARD THAT THE SAID MEMBERS, IN FACT, DID SIGN SUCH A PROXY. HOWEVER, EVEN ASSUMING THAT SUCH PROXIES WERE SIGNED, IT IS CLEAR, BASED ON THE EVIDENCE BEFORE THE BOARD, THAT AS OF THE DATE OF THE MAKING OF THE APPLICATION THE SAID MEMBERS WERE REPRESENTED BY THE APPLICANT. IN OUR VIEW, WE ARE NOT CALLED UPON TO DETERMINE THE EFFECT OF ANY PRIOR AUTHORIZATION GIVEN BY THE SAID MEMBERS TO INTERVENER #6.

10. COUNSEL FOR PIGOTT CONSTRUCTION COMPANY LIMITED (HEREINAFTER



REFERRED TO AS PIGOTT) FILED WITH THE BOARD THE MOST RECENT COLLECTIVE AGREEMENT BETWEEN PIGOTT, FIVE INTERNATIONAL CONSTRUCTION TRADE UNIONS INCLUDING THE INTERNATIONAL UNION OF OPERATING ENGINEERS, WHICH ARE LISTED IN APPENDIX I ATTACHED TO AND FORMING PART OF THE AGREEMENT, AND A PROVINCIAL COUNCIL OF CONSTRUCTION UNIONS COMPOSED OF A REPRESENTATIVE OF EACH OF THE TRADE UNIONS LISTED IN APPENDIX I. THE SAID COLLECTIVE AGREEMENT DATED DECEMBER 29, 1970 EXPIRED ON DECEMBER 28, 1971 AND ACCORDING TO COUNSEL THE PARTIES ARE BARGAINING FOR ITS RENEWAL.

11. ARTICLE 1.05 OF THE COLLECTIVE AGREEMENT READS:

EACH UNION HEREBY COVENANTS AND AGREES TO DELEGATE TO THE COUNCIL THUS CONSTITUTED COMPLETE AND FINAL AUTHORITY TO BARGAIN WITH THE EMPLOYER ON BEHALF OF THE SAID UNION AND THE EMPLOYEES WHOM IT REPRESENTS, AND TO ADMINISTER THIS AGREEMENT AND SETTLE ANY MATTERS OF DISPUTE WHICH MAY ARISE BETWEEN THE EMPLOYER AND ANY OF THE UNIONS OR THE COUNCIL. FURTHERMORE IT IS UNDERSTOOD THAT THIS COVENANT IS BINDING ON EACH OF THE LOCAL UNIONS NAMED IN APPENDIX 2 AND SIGNATORY THERETO IN APPENDIX 4. EACH OF THE SAID UNIONS REPRESENTS AND ENSURES THAT BY VIRTUE OF THE DELEGATED AUTHORITY PROVIDED IN APPENDIX 4 ATTACHED TO AND FORMING PART OF THIS AGREEMENT, IT HAS AUTHORITY TO ACT ON BEHALF OF EACH OF ITS SAID LOCALS, TO THE EXTENT NECESSARY TO MAKE EACH OF THE LOCAL AGREEMENTS CONFORM TO THE PROVISIONS OF THIS AGREEMENT.

ARTICLE 2 OF THE COLLECTIVE AGREEMENT READS:

THE EMPLOYER AGREES TO RECOGNIZE THE COUNCIL COMPRISED OF THE FOLLOWING UNIONS:

INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS (RODMEN'S SECTION)

LABOURERS INTERNATIONAL UNION OF NORTH AMERICA

INTERNATIONAL UNION OF OPERATING ENGINEERS

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, AND

THE LOCAL UNIONS PARTIES TO THIS COLLECTIVE

AGREEMENT AS SET OUT IN APPENDIX 4, AS THE EXCLUSIVE BARGAINING AGENT FOR ALL EMPLOYEES OF THE EMPLOYER ON CONSTRUCTION PROJECTS WITHIN THE PROVINCE OF ONTARIO FOR WHOM THE COUNCIL IS AUTHORIZED TO BARGAIN, SAVE AND EXCEPT ANY NON-WORKING FOREMEN, THOSE ABOVE THE RANK, THE OFFICE AND CLERICAL STAFF AND THE ENGINEERING STAFF.

THE RESPONDENT IS ONE OF THE LOCAL UNIONS NAMED IN APPENDIX 2 AND IS A SIGNATORY THERETO IN APPENDIX 4.

12. COUNSEL FOR PIGOTT SUBMITS THAT BY VIRTUE OF THE PROVISIONS OF THE "COUNCIL AGREEMENT" THE RESPONDENT RELINQUISHED ANY BARGAINING RIGHTS WHICH IT MAY HAVE HELD FOR EMPLOYEES OF PIGOTT AND THAT ACCORDINGLY PIGOTT WOULD NOT FALL WITHIN THE PURVIEW OF ANY UNIT OF EMPLOYERS FOUND TO BE APPROPRIATE BY THE BOARD. COUNSEL IN THE ALTERNATIVE SUBMITS THAT, IN THE EXERCISE OF ITS DISCRETION, THE BOARD SHOULD EXCLUDE PIGOTT FROM ANY UNIT OF EMPLOYERS WHICH IT FINDS TO BE APPROPRIATE.

13. IN THE PIGOTT CONSTRUCTION CO. LIMITED CASE OLRB M.R. MARCH 1969 P. 1332, THE BOARD HAD OCCASION TO INTERPRET A PRIOR "COUNCIL AGREEMENT" WITH PIGOTT. ARTICLE 1.05 AND ARTICLE 2 OF THAT AGREEMENT, IN ESSENCE, ARE THE SAME AS THOSE IN THE MOST RECENT "COUNCIL AGREEMENT" WHICH IS BEFORE THE BOARD IN THE INSTANT CASE. WITHOUT GOING INTO ISSUES INVOLVED IN THE EARLIER CASE, THE BOARD MADE THE FOLLOWING STATEMENT AT P. 1335 WITH RESPECT TO ARTICLE 2:

ARTICLE 2, WHICH IS THE RECOGNITION CLAUSE OF THE AGREEMENT, PROVIDES THAT THE COUNCIL IS COMPRISED OF THE FOUR INTERNATIONAL UNIONS AND THE NAMED LOCAL UNIONS OF THE FOUR INTERNATIONAL UNIONS WHICH ARE SPECIFICALLY DESCRIBED AS PARTIES TO THE AGREEMENT. WE DO NOT ACCEPT COUNSEL FOR THE COMPANY'S CONTENTION THAT THE LOCAL UNIONS IRRETRIEVABLY DIVESTED THEMSELVES OF THEIR BARGAINING RIGHTS. HAVING REGARD TO THE LANGUAGE OF ARTICLE 2, WE FIND THAT THE LOCAL UNIONS ARE PARTIES TO THE COUNCIL AGREEMENT. WE FURTHER FIND THAT THEY CAN REASSERT AND EXERCISE THE BARGAINING RIGHTS THEY HELD IN RELATION TO THE EMPLOYEES OF PIGOTT FALLING UNDER THE LOCALS' JURISDICTION.

14. APPLYING THE FOREGOING STATEMENT TO THE INSTANT CASE, BY VIRTUE OF ARTICLE 2 PIGOTT RECOGNIZED THE LOCAL UNIONS, INCLUDING THE RESPONDENT, AS PARTIES TO THE AGREEMENT FOR WHOM THE COUNCIL IS AUTHORIZED TO BARGAIN. APPENDIX 4 CONTAINS THE SIGNATURE OF OFFICERS OF LOCAL 793 INDICATING THAT THE LOCAL HAD DIRECTLY VESTED THE COUNCIL WITH AUTHORITY TO BARGAIN ON ITS BEHALF. IN EFFECT, LOCAL 793 HAS AUTHORIZED THE COUNCIL TO ACT AS ITS AGENT FOR THE PURPOSE OF COLLECTIVE BARGAINING WITH

PIGOTT. THE RESPONDENT, HOWEVER, HAS NOT RELINQUISHED THE BARGAINING RIGHTS WHICH IT HOLDS FOR THE OPERATING ENGINEERS IN THE EMPLOY OF PIGOTT. WE WOULD POINT OUT THAT PURSUANT TO SUBSECTION (4) OF SECTION 43 OF THE ACT, SHOULD THE RESPONDENT WITHDRAW THE AUTHORITY WHICH IT GAVE TO THE COUNCIL DURING THE TERM OF AN AGREEMENT, THE RESPONDENT AND PIGOTT WOULD BE DEEMED TO BE PARTIES TO A LIKE COLLECTIVE AGREEMENT FOR THE REMAINDER OF THE OPERATION OF THE "COUNCIL AGREEMENT". WE THEREFORE REJECT THE SUBMISSION OF COUNSEL FOR PIGOTT THAT THE RESPONDENT HOLDS NO BARGAINING RIGHTS FOR ANY OF THE EMPLOYEES OF PIGOTT. FURTHERMORE, BASED ON THE SUBMISSIONS OF COUNSEL, WE SEE NO REASON FOR THE BOARD, IN THE EXERCISE OF ITS DISCRETION, TO EXCLUDE PIGOTT FROM ANY UNIT OF EMPLOYERS FOUND TO BE APPROPRIATE IF PIGOTT FALLS WITHIN THE PURVIEW OF THE UNIT.

15. WITH REGARD TO THE APPROPRIATE UNIT OF EMPLOYERS, HAVING CONSIDERED THE REPRESENTATIONS OF THE PARTIES ON THIS ISSUE AND THEIR RESPECTIVE POSITIONS RELATING TO THE EXCLUSION PROPOSED BY INTERVENER #1, WHICH WE SET FORTH IN PARAGRAPH 5 OF THIS DECISION, THE BOARD FINDS THAT ALL EMPLOYERS OF OPERATING ENGINEERS FOR WHOM THE RESPONDENT HAS BARGAINING RIGHTS IN METROPOLITAN TORONTO, THE COUNTIES OF YORK AND PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO IN THE INDUSTRIAL, COMMERCIAL AND INSTITUTIONAL SECTOR, SAVE AND EXCEPT THOSE EMPLOYERS OF OPERATING ENGINEERS FOR WHOM THE RESPONDENT HAS BARGAINING RIGHTS WHO ARE REGULARLY EMPLOYED THROUGHOUT THE PROVINCE OF ONTARIO IN THE ERECTION OF STRUCTURAL STEEL AND MECHANICAL EQUIPMENT, CONSTITUTE A UNIT OF EMPLOYERS FOR COLLECTIVE BARGAINING.

2621-72-R: THE UNITED GARMENT WORKERS OF AMERICA, LOCAL NO. 253 (APPLICANT) V. ABBEY CREST LIMITED (RESPONDENT) V. OUTDOOR OUTFITS LIMITED (INTERVENER).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS F. W. MURRAY AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: E. ROVET, B. WHYTE AND I. CHENALUK FOR THE APPLICANT; A. J. CLARK, Q.C., T. BATCHER AND S. SWITZER FOR THE RESPONDENT; A. J. CLARK, Q.C., T. BATCHER AND S. SWITZER FOR THE INTERVENER.

DECISION OF VICE-CHAIRMAN FRANK V. BOSCARIOL AND BOARD MEMBER F. W. MURRAY:  
MARCH 7, 1973.

1. THIS IS AN APPLICATION MADE PURSUANT TO THE PROVISIONS OF SECTION 55 OF THE LABOUR RELATIONS ACT WHEREIN THE APPLICANT SEEKS A DECLARATION THAT AS A RESULT OF THE SALE OF A PART OF A BUSINESS BY OUTDOOR OUTFITS LIMITED (HEREINAFTER REFERRED TO AS OUTDOOR) TO ABBEY CREST LIMITED (HEREINAFTER REFERRED TO AS ABBEY), ALLEGED TO HAVE TAKEN PLACE ON OR ABOUT OCTOBER 22, 1971, ABBEY IS BOUND BY THE COLLECTIVE AGREEMENT DATED SEPTEMBER 1, 1970, BETWEEN THE APPLICANT AND THE NATIONAL GARMENT MANUFACTURERS ASSOCIATION, OF WHICH OUTDOOR IS A MEMBER.



2. THE EVIDENCE DISCLOSES THAT OUTDOOR WAS INCORPORATED IN ONTARIO ON NOVEMBER 12, 1958 AND AS OF THE DATE OF THE FILING OF THIS APPLICATION, CONDUCTED ITS BUSINESS AT 366 ADELAIDE STREET WEST IN TORONTO, AS A MANUFACTURER, GENERALLY, OF LOOSE-FITTING SPORTSWEAR GARMENTS. HOWEVER, ON OCCASION, OUTDOOR WOULD ALSO MANUFACTURE THE UNIFORM-TYPE OR TAILORED GARMENTS. MANAGEMENT IN OUTDOOR IS SHARED BY SHELDON SWITZER, THE SECRETARY-TREASURER AND MANAGER OF OUTDOOR, WITH HIS FATHER JOSEPH SWITZER, THE PRESIDENT.

3. ABBEY WAS INCORPORATED IN ONTARIO ON OCTOBER 22, 1971 AND IN THE PAST, HAS CONDUCTED OPERATIONS AT 333 ADELAIDE STREET WEST, SITUATE ALMOST DIRECTLY ACROSS THE STREET FROM THE OUTDOOR PREMISES. ITS ACTIVITIES WOULD APPEAR TO BE RESTRICTED TO THE MANUFACTURE OF TAILORED GARMENTS. BENEFICIAL OWNERSHIP IN ABBEY LIES WITH THE TWO SWITZERS, AS EVIDENCED BY A SINGLE SHARE WHICH IS HELD ON THEIR BEHALF BY MELVIN ROSENBERG, ITS ONLY OFFICER. AS OF THE DATE OF THIS HEARING, ABBEY'S OPERATIONS HAVE BEEN TRANSFERRED TO A NEW LOCATION AT 372 RICHMOND STREET IN TORONTO. THESE PREMISES ARE LEGALLY OWNED BY "REZTIWS INVESTMENTS LTD.", A COMPANY WHICH WAS INCORPORATED IN ONTARIO ON APRIL 28, 1972. ACCORDING TO SHELDON SWITZER, THIS COMPANY WAS INCORPORATED UNDER HIS FATHER'S INSTRUCTIONS AND AS OF THE DATE OF THIS HEARING, HAD NO SHAREHOLDERS NOR OFFICERS. HE FURTHER TESTIFIED, HOWEVER, THAT WHEN ABBEY BEGAN OPERATIONS THERE WAS "NO SALE OF MACHINERY OR ANYTING" FROM OUTDOOR TO ABBEY AND ALTHOUGH HE HAS OCCASIONALLY ATTENDED THE PREMISES AT ABBEY "JUST TO LOOK AROUND", HE DENIED TAKING ANY ACTIVE ROLE IN THAT BUSINESS (EXCEPT FOR CERTAIN BOOKKEEPING FUNCTIONS) AND THAT ABBEY'S WHOLE OPERATION WAS MANAGED BY THE FOREMAN, MR. GOLDBERG. HAVING REGARD TO THE TOTALITY OF THE EVIDENCE, WE ARE SATISFIED THAT EFFECTIVE AND ULTIMATE CONTROL OF THE ABBEY OPERATION WAS AT ALL MATERIAL TIMES IN THE HANDS OF THE TWO SWITZERS. WE ARE FURTHER SATISFIED THAT AS OF THE DATE OF THIS HEARING, THAT PLANS WERE AFOOT, BUT NOT FINALIZED, FOR THE TRANSFER OF THE OUTDOOR OPERATION TO 372 RICHMOND STREET, WHERE TWO SEPARATE CUTTING ROOMS ARE HOUSED.

4. MRS. CHENALUK, THE BUSINESS AGENT FOR THE APPLICANT, TESTIFIED THAT SHE PARTICIPATED IN NEGOTIATIONS WITH OUTDOOR, WHICH PURSUANT TO THE COLLECTIVE AGREEMENT (EXHIBIT #3) IS A CLOSED SHOP, ON BEHALF OF ALL CUTTERS, OPERATORS AND PRESSERS IN ITS EMPLOY. THESE NEGOTIATIONS WOULD ALSO INCLUDE "GARMENT PRICING", A PROCESS WHEREBY MRS. CHENALUK TOGETHER WITH THE MEMBERS OF THE SHOP COMMITTEE UPON ARRIVING UPON A PIECE WORK RATE CONCERNING A PARTICULAR SAMPLE OF WORK, WOULD THEN SUBMIT SUCH RATE TO MANAGEMENT AS A BASIS FOR BARGAINING. ALTHOUGH AN AGREED-UPON PRICE WAS NORMALLY ARRIVED AT THROUGH THIS PROCESS, THE WITNESS TESTIFIED THAT DIFFICULTIES WERE ENCOUNTERED IN RELATION TO SAMPLES INVOLVING POST OFFICE JACKETS AND ARMED FORCES COATS WHICH WERE PREPARED ON THE PREMISES OF OUTDOOR AT 366 ADELAIDE STREET WEST. AS REGARDS THE POST OFFICE JACKETS, THE PARTIES BROKE OFF NEGOTIATIONS SOMETIME IN JULY OF 1971 SINCE JOSEPH SWITZER "FELT THE PRICES WERE TOO HIGH." HOWEVER, ACCORDING TO THE WITNESS, HE NEVERTHELESS ASKED THAT THE MATTER BE LEFT WITH HIM. IN JUNE OF 1972, THE PARTIES HAD LIKEWISE FAILED TO REACH AGREEMENT ON THE STANDARD PRICING OF THE ARMED FORCES COAT.

5. MRS. CHENALUK FURTHER TESTIFIED THAT IN DECEMBER OF 1971, SHE BECAME AWARE THAT GEORGE MARTIN, A MEMBER OF THE APPLICANT AND A CUTTER EMPLOYED AT OUTDOOR, WAS ALSO WORKING AT THE ABBEY PREMISES LOCATED AT THAT TIME AT 333 ADELAIDE STREET WEST. UPON APPROACHING THE SWITZERS IN THIS REGARD, SHE WAS TOLD THAT THEY WERE MERELY ASSISTING ANOTHER INDIVIDUAL IN SETTING UP THE ABBEY OPERATIONS AND DISCLAIMED ANY OWNERSHIP THEREOF. IN MARCH OF 1972, THE WITNESS HAD A FURTHER DISCUSSION WITH JOSEPH SWITZER IN THE COURSE OF INVESTIGATING A COMPLAINT THAT CLUB JACKETS WERE BEING MANUFACTURED ON THE ABBEY PREMISES. TO DISPEL SUCH FEARS, SHE FURTHER STATED THAT JOSEPH SWITZER INVITED HER TO ATTEND THE ABBEY PREMISES HERSELF AND VIEW THE OPERATION. UPON ATTENDING THESE PREMISES THE NEXT DAY IN THE COMPANY OF BERNARD WHYTE, THE INTERNATIONAL REPRESENTATIVE, SHE TESTIFIED THAT ALTHOUGH SHE DID NOT SEE ANY CLUB JACKETS, SHE DID OBSERVE RACKS OF POST OFFICE JACKETS BEARING OUTDOOR LABELS, THE SAMPLE OF WHICH HAD ORIGINALLY BEEN PREPARED AT THE OUTDOOR PREMISES AS OUTLINED IN PARAGRAPH #4 HEREIN. UPON A SECOND VISIT TO THE ABBEY PREMISES IN JULY OF 1972, AGAIN ACCOMPANIED BY BERNARD WHYTE, SHE STATED THAT THEY OBSERVED A QUANTITY OF COMPLETED ARMED FORCES COATS WHICH BORE THE OUTDOOR LABEL. AS PREVIOUSLY INDICATED, THE SAMPLE FOR THESE COATS WAS ALSO PREPARED AT THE OUTDOOR PREMISES. THE WITNESS FURTHER TESTIFIED THAT PRIOR TO ABBEY COMING UPON THE SCENE, OUTDOOR HAD PREVIOUSLY MANUFACTURED BOTH POSTAL JACKETS AND ARMY COATS AS WELL AS CLUB JACKETS, POLICE COATS AND POST OFFICE PARKAS. IN ANY EVENT, THE EVIDENCE IS CLEAR THAT APPROXIMATELY NINE THOUSAND POST OFFICE JACKETS AND FIFTEEN THOUSAND ARMED FORCES COATS WERE MANUFACTURED AT THE ABBEY PREMISES.

6. THE EVIDENCE OF GEORGE MARTIN, THE HEAD CUTTER AT OUTDOOR, CORROBORATES MRS. CHENALUK'S TESTIMONY AS REGARDS HIS CONCURRENT EMPLOYMENT AT ABBEY. HE STATED THAT JOSEPH SWITZER HAD ORIGINALLY ASKED HIM TO CUT AT THE ABBEY PREMISES AND THAT HE HAD WORKED THERE FOR A PERIOD OF TWO OR THREE DAYS PER WEEK FROM OCTOBER UNTIL DECEMBER OF 1971. NOTATIONS ON BOTH HIS CHEQUE FOR THAT PERIOD OF TIME, AND HIS T-4 STATEMENT OF REMUNERATION, REFER TO ONLY OUTDOOR AS THE EMPLOYER. RUDOLPH VELOHUBEK TESTIFIED THAT HE WAS EMPLOYED BY OUTDOOR AS AN OPERATOR FOR 7 YEARS AND AS A SHOP STEWARD WAS ON THE PRICING COMMITTEE. HIS EVIDENCE REGARDING THE PRICING OF THE SAMPLES OF THE POST OFFICE JACKETS AND ARMED FORCES COATS AT THE PREMISES OF OUTDOOR CONFIRMS THE TESTIMONY OF MRS. CHENALUK IN THIS REGARD. WHILE ABRAHAM SCHWARTZBERG, A PRESSER AT THE TIME WITH OUTDOOR, TESTIFIED THAT JOE SWITZER, ABOUT ONE YEAR AGO, HAD REQUESTED HIM "TO GO ACROSS THE ROAD" (EG. TO THE ABBEY PREMISES) BECAUSE OF A LACK OF WORK AT OUTDOOR, VELOHUBEK'S VERSION OF JOE SWITZER'S REQUEST WAS THAT IT WAS GIVEN MORE IN THE NATURE OF A THREAT FOR ALLEGED INFERIOR WORK. IN ANY EVENT, THE EVIDENCE IS CLEAR THAT SCHWARTZBERG NEVER DID IN FACT WORK AT ABBEY. THE TESTIMONY OF WALTER MAKAREWYCH REVEALS THAT HE WORKED AT THE ABBEY PREMISES AT 333 ADELAIDE STREET, FROM JANUARY 15, TO AUGUST OF 1972, AS A CUTTER. HE STATED THAT UPON BEING HIRED BY THE FOREMAN, MR. GOLDBERG, HE WAS TOLD THAT "OUTDOOR HAD OPENED THIS NEW SHOP UNDER THE NAME OF ABBEY." THE WITNESS FURTHER TESTIFIED THAT GOLDBERG INFORMED HIM THAT ABBEY WAS A NON-UNION SHOP AND HIS PAY WOULD THEREFORE BE BELOW THE UNION RATE. REGARDING HIS PAY, MAKAREWYCH TESTIFIED THAT THE CHEQUES

WERE PREPARED AT THE OUTDOOR OFFICE AS THERE WERE NO OFFICE FACILITIES AT THE ABBEY LOCATION. THEY WERE DELIVERED TO THE ABBEY PREMISES BY THE OFFICE GIRL EMPLOYED AT OUTDOOR.

7. ARTICLE 3.02 OF THE COLLECTIVE AGREEMENT REFERRED TO IN PARAGRAPH No. 1 HEREIN, PROVIDES AS FOLLOWS:

"THE MANUFACTURER (EG OUTDOOR) AGREES NOT TO ENGAGE IN THE PRACTICE OF "CONTRACTING" HIS WORK TO OTHERS, WITHOUT THE CONSENT OF THE ASSOCIATION AND THE UNION."

AS REGARDS THE WORK INVOLVING THE MANUFACTURE OF THE POST OFFICE JACKETS AND THE ARMED FORCES COATS AS REFERRED TO ABOVE, THE EVIDENCE IS CLEAR THAT THE APPLICANT HAD NEVER GIVEN ITS CONSENT TO OUTDOOR TO SUBCONTRACT ALL OR ANY PORTION OF IT TO ABBEY. IN THE PAST, THE APPLICANT HAS SEEN FIT TO GRANT ITS CONSENT TO CONTRACTING OUT WORK TO OTHER MANUFACTURERS, EXAMPLES OF WHICH WERE THE T.T.C. COATS TO QUALITY LEATHER SPORTSWEAR LTD. AND HYDRO PARKAS TO HUDSON'S SPORTSWEAR MANUFACTURING CO. LTD.

8. SHELDON SWITZER'S EVIDENCE, INTER ALIA, REVEALS THAT ALTHOUGH ABBEY EMPLOYS CUTTERS, OPERATORS AND PRESSERS, THE COMPANY DID NOT REQUIRE SHIPPERS. AS REGARDS THE ABBEY PAYROLL, SWITZER TESTIFIED THAT GOLDBERG TAKES THE EMPLOYEE'S TIME CARDS AND PIECE WORK TICKETS OVER TO THE BANK AND THE BANK THEN PREPARES THE PAYROLL. AFTER THE BANK MAKES UP THE CHEQUES, THEY ARE DELIVERED TO GOLDBERG WHO PERSONALLY DISTRIBUTES THEM TO THE EMPLOYEES. WHEN ASKED THE PURPOSE FOR ESTABLISHING ABBEY, SWITZER STATED THAT "THERE WERE OCCASIONS WHERE WE MIGHT GO AFTER CERTAIN BUSINESS AND WE WOULD HAVE TO HAVE ANOTHER NAME, AS FOR EXAMPLE, SOME PEOPLE MIGHT NOT WANT TO DEAL WITH OUTDOOR." ON CROSS-EXAMINATION, SWITZER CONCEDED THAT GOLDBERG HAD AT ONE TIME WORKED FOR OUTDOOR ABOUT SIX YEARS AGO. IN SWITZER'S WORDS "WE (MY FATHER AND MYSELF) REHIRED HIM AND TOLD HIM THAT HE WAS IN SOLE CHARGE." WHEN ASKED TO WHOM DOES GOLDBERG DIRECTLY REPORT AS REGARDS THE ABBEY OPERATION, SWITZER STATED THAT HE REPORTED TO THE SWITZERS THROUGH CALLS HE PLACES A FEW TIMES PER WEEK. THERE ARE NO OTHER MANAGEMENT PERSONNEL AT ABBEY. SWITZER AGREED THAT GEORGE MARTIN WAS "LENT" BY OUTDOOR TO ABBEY FOR VARYING PERIODS OF TIME IN THE FALL OF 1971, AS ABBEY WAS JUST BEGINNING ITS OPERATIONS AND REQUIRED SOME CUTTING HELP. ALTHOUGH HE WAS PAID BY AN OUTDOOR CHEQUE, OUTDOOR IN TURN BILLED ABBEY FOR THE AMOUNT OF HOURS HE WORKED THERE. WHEN QUESTIONED AS TO WHY OUTDOOR DID NOT ITSELF MANUFACTURE THE POST OFFICE JACKET UPON WHICH PREMISES THE SAMPLE HAD BEEN MADE, SWITZER REPLIED THAT "WE COULD CONTRACT THAT GARMENT OUT AT A BETTER PRICE THAN THAT AT OUTDOOR." HE WAS NOT SURE, HOWEVER, WHETHER THE POST OFFICE CONTRACT HAD BEEN GIVEN TO ABBEY BEFORE OR AFTER THE FEDERAL GOVERNMENT ACCEPTED OUTDOOR'S BID. IN THIS REGARD, HE STATED THE CONTRACT WAS VERBALLY GIVEN TO ABBEY IN AUGUST OR SEPTEMBER OF 1971. WHEN REMINDED THAT ABBEY WAS NOT A LEGAL ENTITY AT THIS TIME, SWITZER STATED THAT NEVERTHELESS A FORMAL APPLICATION FOR INCORPORATION HAD BEEN FILED AT THIS TIME. SWITZER FURTHER AGREED THAT OUTDOOR HAD ORIGINALLY ASKED THE APPLICANT



FOR A PRICE ON THE POST OFFICE JACKETS AND ARMY COATS. WHEN THE PRICE COULD NOT BE AGREED UPON HE STATED THAT "WE LOOKED FOR OTHER CONTRACTORS TO MAKE THESE GARMENTS, AND WE CHOSE ABBEY." HE STATED THAT THE GARMENTS WERE MANUFACTURED BY ABBEY AT ITS PREMISES AND THAT THE OUTDOOR LABEL WOULD BE SEWN INTO EACH GARMENT BY ABBEY EMPLOYEES. THE SHIPPERS EMPLOYED AT OUTDOOR WOULD THEN PICK UP THE GARMENTS IN BULK AND DELIVER THEM TO THE OUTDOOR PREMISES WHERE THEY WOULD BE PROPERLY PACKAGED AND MAILED TO THE CUSTOMER. THE MATERIALS FOR THESE GARMENTS WERE ORIGINALLY SUPPLIED BY THE GOVERNMENT.

9. SWITZER FURTHER TESTIFIED THAT THERE WAS ANOTHER OCCASION IN WHICH OUTDOOR COULD NOT SETTLE A PRICE WITH THE APPLICANT'S SHOP COMMITTEE. THIS OCCURRED ON DECEMBER 17, 1970, IN RELATION TO WORK INVOLVING TORONTO TRANSIT COMMISSION COATS. AS A RESULT, THIS WORK WAS CONTRACTED OUT TO QUALITY LEATHER SPORTSWEAR LTD., (HEREINAFTER REFERRED TO AS QUALITY) ANOTHER MANUFACTURER. IN THIS REGARD, HE STATED THAT THE WORK WAS PERFORMED AT THE QUALITY PLANT UTILIZING QUALITY EMPLOYEES WHO ALSO INSERTED OUTDOOR LABELS INTO THE GARMENTS. AS REGARDS THE BULK DELIVERY OF THE GARMENTS TO THE OUTDOOR PREMISES, HE STATED THESE FUNCTIONS WOULD BE PERFORMED BY BOTH OUTDOOR AND QUALITY EMPLOYEES. ANOTHER CASE OF CONTRACTING OUT, ACCORDING TO SWITZER, OCCURRED WHEN OUTDOOR SUB-CONTRACTED WORK INVOLVING HYDRO PARKAS TO HUDSON'S SPORTSWEAR MANUFACTURING CO. LTD. (HEREINAFTER REFERRED TO AS HUDSON). AS WITH QUALITY, THE LABELS FOR THESE PARKAS WERE INSERTED BY HUDSON EMPLOYEES ON HUDSON PREMISES. THE SHIPPING FUNCTIONS IN THIS CASE WERE PERFORMED BY AN INDEPENDENT CARTAGE COMPANY RETAINED BY OUTDOOR. WHEN ASKED TO ENUMERATE OTHER OCCASIONS IN WHICH WORK WAS CONTRACTED OUT TO VARIOUS MANUFACTURERS, SWITZER INDICATED THAT CONTRACTS WERE LET TO SHAIN OF CANADA AND METRO SPORTSWEAR COMPANY (HEREINAFTER REFERRED TO AS SHAIN AND METRO, RESPECTIVELY). AGAIN, THE OUTDOOR LABEL WAS INSERTED BY THE EMPLOYEES OF THESE COMPANIES AT THEIR RESPECTIVE PREMISES. MRS. CHENALUK'S TESTIMONY IN THIS REGARD, IS THAT SHE WAS NEVER CONSULTED ON THE ITEMS CONTRACTED TO THESE COMPANIES, WHICH ARE NON-UNION SHOPS.

10. AS REGARDS THE ASSIGNMENT OF THE WORK INVOLVING THE POST OFFICE JACKETS AND ARMED FORCES COATS TO ABBEY, THE EVIDENCE IS CLEAR THAT AT ALL RELEVANT TIMES, OUTDOOR CONTINUED TO OPERATE AT FULL CAPACITY AND THAT NO LAY OFFS RESULTED FROM THIS DECISION. WE ARE FURTHER SATISFIED, HAVING REGARD TO THE TOTALITY OF THE EVIDENCE, THAT THIS DECISION WAS PRECIPITATED BY THE FACT THAT THE MANUFACTURE OF THESE ITEMS AT ABBEY, A NON-UNION SHOP, WAS ACHIEVED AT A LOWER LABOUR COST TO OUTDOOR THAN COULD HAVE BEEN THE CASE, HAD IT PERFORMED THE WORK ITSELF. THE QUESTION NOW BEFORE THIS BOARD IS TO DETERMINE WHETHER THE DECISION BY OUTDOOR TO ASSIGN THIS WORK TO ABBEY, IN THE PARTICULAR CIRCUMSTANCES OF THIS CASE, FALLS WITHIN THE PROVISIONS OF SECTION 55 OF THE LABOUR RELATIONS ACT.

11. HAVING CAREFULLY REVIEWED THE TOTALITY OF THE EVIDENCE, WE FIND THAT THE CONTRACT LET FROM OUTDOOR TO ABBEY WITH RESPECT TO THE POST OFFICE JACKETS AND ARMED FORCES COATS DID NOT IN FACT RESULT IN THE DIMINUTION OF ANY OF THE BUSINESS OF OUTDOOR AT THAT TIME, AND IN THIS REGARD IS INDISTINGUISHABLE FROM THE SUB-CONTRACTING ARRANGEMENTS ENTERED

INTO BY OUTDOOR WITH QUALITY, HUDSON, SHAIN AND METRO. IT MIGHT VERY WELL BE THAT OUTDOOR IN ITS DEALINGS WITH ABBEY, HUDSON AND SHAIN, IN THIS REGARD, IS IN BREACH OF THE RELEVANT PROVISIONS OF ITS COLLECTIVE AGREEMENT AS SET OUT IN PARAGRAPH #7 HEREIN. HOWEVER, THIS IS A MATTER WHICH THE BOARD NEED NOT BE CONCERNED WITH AND THE REMEDY OF THE APPLICANT, IF ANY, IN THESE CIRCUMSTANCES MIGHT BE TO SEEK REDRESS UNDER THE GRIEVANCE AND ARBITRATION PROVISIONS AS SET OUT IN THE SAID COLLECTIVE AGREEMENT.

12. FURTHER, WE FIND NOTHING IN THE PROVISIONS OF SECTION 55 OF THE ACT, WHICH REQUIRES OUTDOOR TO EXPAND ITS OWN FACILITIES AS REGARDS THE MANUFACTURE OF THE POST OFFICE JACKETS AND ARMED FORCES COATS RATHER THAN ASSIGNING SUCH WORK TO ABBEY IN THE CIRCUMSTANCES AS SET OUT ABOVE.

13. HAVING REGARD TO ALL OF THE CIRCUMSTANCES, WE THEREFORE FIND THAT THERE HAS BEEN NO SALE AS CONTEMPLATED BY THE PROVISIONS OF SECTION 55 OF THE LABOUR RELATIONS ACT.

14. ACCORDINGLY, THIS APPLICATION IS DISMISSED.

DECISION OF BOARD MEMBER P. J. O'KEEFFE: MARCH 7, 1973.

1. THE MAJORITY IN ITS DECISION HAVE OUTLINED THE FACTS IN THIS MATTER.

2. THE FACT SITUATION IN THIS MATTER CLEARLY ESTABLISHES THAT THE CORPORATE JUGGLING ACT INVOLVED HEREIN WAS PRECIPITATED BY THE DESIRE OF OUTDOOR OUTFITS LIMITED TO ESCAPE FROM ITS OBLIGATIONS TO ABIDE BY THE COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE NATIONAL GARMENT MANUFACTURERS ASSOCIATION, OF WHICH OUTDOOR IS A MEMBER.

3. THE AIMS AND POLICY OF THE LEGISLATURE IN ENACTING SECTION 55 (FORMERLY SECTION 47A) OF THE ACT AND THE MICHIEF IT WAS INTENDED TO CORRECT WAS POINTED OUT IN THE THORCO MANUFACTURING LTD. CASE 65 CLLC 916,052, WHERE AT PAGE 787, IT IS STATED:

"IT IS MANIFEST THAT THE OBJECT SOUGHT TO BE ATTAINED BY S47A OF THE ACT IS TO MAINTAIN AND CONTINUE THE BARGAINING RIGHTS OF A UNION FOR THE EMPLOYEES IN THE BARGAINING UNIT REPRESENTED BY IT, WHEN THE BUSINESS OR THE PART OR PARTS THEREOF IN WHICH SUCH EMPLOYEES ARE EMPLOYED IS SOLD (WHICH TERM IS ALSO BY THE SECTION MADE TO INCLUDE LEASED, TRANSFERRED OR OTHERWISE DISPOSED OF) TO ANOTHER EMPLOYER ...IN PASSING THIS ENACTMENT, THE LEGISLATURE WAS NO DOUBT FULLY COGNIZANT OF THE FACT THAT TRANSFERS AND OTHER DISPOSITIONS OF BUSINESSES AND PARTS THEREOF ARE OFTEN IMPLEMENTED, RESULT FROM, AND ARE CAUSED BY A VARIETY OF TRANSACTIONS

OF DIFFERENT FORMS AND PERMUTATIONS, NOT EXCLUDING THOSE WHICH RESULT FROM THE OPERATION OF LAW. THE CIRCUMSTANCES WHICH WILL DETERMINE AND INFLUENCE THE NATURE AND FORM OF THE TRANSACTIONS EFFECTING SUCH OR OTHER DISPOSITION ARE NOT, OF COURSE, CAPABLE OF DEFINITIVE ENUMERATION; MUCH NO DOUBT, WILL DEPEND UPON THE NATURE OF THE BUSINESS, THE REASON FOR AND THE PURPOSE OF THE TRANSACTION, THE POSITION OF THE PARTIES, THE BARGAIN SOUGHT TO BE EFFECTED BY THE TRANSFER OR OTHER DISPOSITION ETC."

IN THE AIRCRAFT METAL SPECIALTIES LTD. CASE, OLRB M.R. SEPTEMBER 1970, P. 702, AT PAGE 704, APPEARS THE FOLLOWING:

"THE PURPOSE OF SECTION 47A BECOMES IMPORTANT IN ASSESSING THE VARIOUS FACT SITUATIONS THAT ARISE. SECTION 47A OPERATES ON A NUMBER OF LEVELS. THE FIRST LEVEL OF COURSE IS TO PREVENT THE SUBVERSION OF BARGAINING RIGHTS BY TRANSACTIONS WHICH ARE DESIGNED TO GET RID OF A TRADE UNION. WE HAVE ENCOUNTERED SITUATIONS WHERE THERE ARE TRANSACTIONS BETWEEN VARIOUS CORPORATE ENTITIES WHICH ARE IN EFFECT "PAPER TRANSACTIONS", AND ARE A FORM OF CORPORATE CHARADE ENGAGED IN FOR THE PURPOSE OF ELIMINATING THE TRADE UNION. IN THIS TYPE OF CASE THE BOARD HAS LIBERALLY INTERPRETED SECTION 47A TO PRESERVE THE BARGAINING RIGHTS AND HAS ATTEMPTED TO LOOK BEYOND "PAPER TRANSACTIONS" TO ACHIEVE THAT PURPOSE. SEE; E. G. KEM'S MASONRY OLRB M.R. DECEMBER 1964 382; TRENTON RIVERSIDE DAIRY PRODUCTS (1964) 2 C.L.C. 76-1005.

A FURTHER AND IMPORTANT PURPOSE OF SECTION 47A IS TO PRESERVE THE BARGAINING RIGHTS WITH RESPECT TO WORK WHICH HAS ACCRUED TO THE BENEFIT OF THE EMPLOYEES AS A RESULT OF THEIR UNION BECOMING THE BARGAINING AGENT THROUGH CERTIFICATION OR VOLUNTARY RECOGNITION. ONCE A UNION HAS BEEN RECOGNIZED WITH RESPECT TO A PARTICULAR BUSINESS THE UNION THEN OBTAINS A RIGHT TO BARGAIN WITH RESPECT TO WAGES, HOURS AND OTHER CONDITIONS OF EMPLOYMENT IN THE BUSINESS. THE RIGHT TO PARTICIPATE IN THE BUSINESS AND ITS FUNCTIONS IN THAT MANNER IS IN THE NATURE OF A VESTED RIGHT AND SECTION 47A ALLOWS THE UNION TO PURSUE THAT BARGAINING RIGHT WHEN ALL OR PART OF THE BUSINESS IS SOLD. IN MAKING DETERMINATIONS UNDER SECTION 47A THEREFORE, THE BOARD IS INTERESTED IN MAINTAINING THE BARGAINING RIGHTS WHERE THE SALE INVOLVES A CONTINUUM OF THE BUSINESS."

(UNDERLINING ADDED)



4. THE TERM "SALE" WAS GIVEN A DEFINITIVE LIBERAL INTERPRETATION IN THE THORCO MANUFACTURING LTD. CASE (SUPRA) WHERE AT PAGE 787, APPEARS THE FOLLOWING:

"ACCORDING TO ITS STRICT SIGNIFICATION, THE TERM SELLS IS USUALLY TAKEN TO DESCRIBE A TRANSACTION INVOLVING THE DISPOSAL OF PROPERTY BY ONE TO ANOTHER IN CONSIDERATION OF SUM PAID OR AGREED TO BE PAID BY THE RECIPIENT IN MONEY OR ITS EQUIVALENT. AS USED IN S47A, HOWEVER, THE WORD SELLS HAS BEEN GIVEN A WIDE DEFINITION WHICH INCLUDES LEASE, TRANSFERS, AND ANY OTHER MANNER OF DISPOSITION OF THE BUSINESS OR PART THEREOF. IN LEGAL PARLANCE THE WORD LEASE GENERALLY DENOTES A SPECIFIC KIND OF CONTRACT BY WHICH ONE PARTY, CALLED THE LESSOR, FOR A CONSIDERATION IN MONEY OR ITS EQUIVALENT, CONFERS ON ANOTHER, CALLED THE LESSEE, THE EXCLUSIVE POSSESSION OF CERTAIN PROPERTY FOR A PERIOD OF TIME. THE WORD TRANSFERS, HOWEVER, IS OBVIOUSLY A TERM OF WIDE SIGNIFICATION AND UNLESS RESTRICTED BY THE CONTEXT IS CAPABLE OF DESCRIBING A MULTITUDE OF TRANSACTIONS WHETHER BY SALE, EXCHANGE, GIFT, TRUST OR OTHERWISE BY WHICH PROPERTY, RIGHTS OR INTERESTS, ETC., ARE TRANSMITTED ABSOLUTELY, CONDITIONALLY ETC. BY OPERATION OF LAW FROM ONE PERSON TO ANOTHER. WE ARE UNABLE TO FIND ANYTHING IN THE LANGUAGE OF THE SECTION TO DENOTE ANY LEGISLATIVE INTENTION TO RESTRICT THE MEANING OF THE WORD TRANSFERS TO ANY PARTICULAR KIND OF TRANSFER. ALSO HAVING REGARD TO THE PARTICULAR LANGUAGE USED AND THE REMEDIAL OBJECT SOUGHT TO BE ATTAINED AND BY THE WIDE MEANING WHICH MUST BE ATTRIBUTED TO THE PRECEDING WORD TRANSFERS, IT IS OUR OPINION THAT THE GENERALITY OF THE WORDS ANY OTHER MANNER OF DISPOSITION IS NOT INTENDED TO BE IN ANY WAY LIMITED BY OR INTERPRETED EJUSDEM GENERIS WITH THE WORDS LEASES, OR TRANSFERS. IN OUR OPINION, IT IS MORE IN HARMONY WITH THE LANGUAGE AND THE REMEDY ENVISAGED BY THE ENACTMENT TO INTERPRET THE WORDS AND ANY OTHER MANNER OF DISPOSITION AS AN OMNIBUS OR SAVING PROVISION INTENDED TO INCLUDE DISPOSITIONS OF THE BUSINESS OR A PART OR PARTS THEREOF BY ANY MODE OR MEANS WHATEVER WHICH ARE NOT APPROPRIATELY DESCRIBED BY THE PRECEDING WORDS WHICH STATE THAT SELLS INCLUDES LEASES OR TRANSFERS."

5. IN THE CLARKE DAIRY LIMITED CASE OLRB M.R. AUGUST 1970 601,

WHERE DURING THE COURSE OF A LEGAL STRIKE, CLARKE WAS EXPERIENCING DIFFICULTIES KEEPING ITS CUSTOMERS SUPPLIED WITH DAIRY PRODUCTS MANUFACTURED BY IT, IT THEREFORE CAUSED TO BE CREATED THROUGH AN ASSOCIATED COMPANY (THE BENEFICIAL OWNERS BEING THE SAME AS CLARKE) A CARTAGE COMPANY KNOWN AS LARK. LARK PURPORTEDLY NEGOTIATED A CONTRACT WITH CLARKE WHEREBY THE DELIVERY PORTION OF ITS UNDERTAKING WAS ASSUMED BY LARK FOR A PERIOD PRESUMABLY DICTATED BY THE STRIKE SITUATION.

ON THE ONE HAND THE BOARD IN REFERRING TO KEM'S MASONRY (SUPRA) STATED AT P. 605;

"IN THIS CASE ALTHOUGH CLARK CARRIES ON BUSINESS AS A DAIRY, PART OF ITS BUSINESS CONSISTS IN THE DELIVERY OF DAIRY PRODUCTS TO VARIOUS CUSTOMERS. IT IS CLEAR THAT BY ITS ARRANGEMENT WITH LARK IT HAS DISPOSED OF A PART OF THAT DELIVERY SERVICE. ITS ACTIONS IN SO DOING CONSTITUTE A MANNER OF DISPOSITION OF A PART OF ITS BUSINESS WITHIN THE MEANING OF S55(1)(A)(B) OF THE L.R.A."

BUT NOTWITHSTANDING THE BOARD'S FINDING THAT A SALE TRANSPIRED THE BOARD IN THE ALTERNATIVE HELD;

"IN THIS CASE THERE IS A SIMPLE INSERTION OF A CORPORATE ENTITY INTO THE ENTERPRISE AND OPERATION OF CLARK. THE MERE LABELLING OF AN OPERATION WITH ANOTHER NAME, ALBEIT, A CORPORATE NAME AND THE MINOR ADJUSTMENTS OF CERTAIN INCIDENTS SUCH AS OCCURRED HERE IS NOT SUFFICIENT TO DISSOLVE BARGAINING RIGHTS HELD BY THE APPLICANT TRADE UNION."

THUS THE BOARD IN THIS CASE PAID SOME HEED TO THE MISCHIEF OF THE ACT AS A WHOLE AND MORE PARTICULARLY TO THE PURPOSE OF S55, AND FOUND A "SALE OF A BUSINESS" IN THE ONE INSTANCE AND IN THE ALTERNATIVE, HELD THE PREDECESSOR TO BE THE EMPLOYER IN ANY EVENT.

6. ON REVIEWING THE EVIDENCE IN THIS CASE, I FIND THAT THE CONTRACT LET FROM OUTDOOR TO ABBEY WITH RESPECT TO THE POST OFFICE JACKETS AND ARMED FORCES COATS CLEARLY DISTINGUISHABLE FROM THOSE ASSIGNED TO QUALITY, HUDSON, SHAIN AND METRO MANUFACTURERS. WITHOUT CONSIDERING THE PROPRIETY OF OUTDOOR'S ACTIONS AS REGARDS THE LATTER TWO COMPANIES UNDER THE RELEVANT TERMS OF THE COLLECTIVE AGREEMENT, I FIND THAT THE ABBEY OPERATION, THROUGH THE INSTRUMENTALITY OF THE TWO SWITZERS, HAVING REGARD TO ALL OF THE CIRCUMSTANCES HEREIN, CONSTITUTED IN EFFECT A DISPOSITION OF BUSINESS WITHIN THE MEANING OF SECTION 55 OF THE ACT, INVOLVING A CONTINUUM OF THE OPERATIONAL FACILITIES OF OUTDOOR. IN THIS REGARD, I FIND THE PRINCIPLES AS SET OUT IN THE CLARKE DAIRY LIMITED CASE (SUPRA) APPLICABLE.

7. ACCORDINGLY, I DECLARE THAT AS A RESULT OF THE SALE OF A PART OF A BUSINESS BY OUTDOOR, ABBEY IS BOUND BY THE COLLECTIVE AGREEMENT DATED SEPTEMBER 1, 1970, ENTERED INTO BETWEEN THE APPLICANT AND THE NATIONAL GARMENT MANUFACTURERS ASSOCIATION.

2727-72-R: OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION, LOCAL 124 (APPLICANT) v. INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES, LOCAL UNION 1891; AND C. ROMANELLI DRYWALL LIMITED (RESPONDENTS) v. DURABLE DRYWALL LIMITED (INTERVENER).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS E. BOYER AND J. E. C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: DENIS J. POWER AND JEAN - GUY DENIS FOR THE APPLICANT; RAYMOND KOSKIE AND A. COLAFRANCESCHI FOR THE RESPONDENT TRADE UNION AND R. A. WERRY AND C. ROMANELLI FOR THE RESPONDENT EMPLOYER AND THE INTERVENER.

DECISION OF THE BOARD: MARCH 8, 1973.

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2. THE APPLICANT APPLIES TO THE BOARD UNDER SECTION 50 OF THE LABOUR RELATIONS ACT FOR A DECLARATION THAT THE RESPONDENT TRADE UNION NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT FOR WHICH IT WAS CERTIFIED AS THE BARGAINING AGENT.

3. ALTHOUGH NOT INCLUDED IN THE STYLE OF CAUSE OF ITS APPLICATION, THE APPLICANT HAS STATED IN ITS APPLICATION THAT "DURABLE DRY WALL" AND "C. ROMANELLI LTD." ARE THE EMPLOYER (SIC) OF EMPLOYEES AFFECTED BY THIS APPLICATION. DURABLE DRYWALL LIMITED HAS INTERVENED IN THIS APPLICATION.

4. IN A DECISION DATED OCTOBER 10, 1972, THE BOARD ISSUED A CERTIFICATE TO THE INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES LOCAL UNION 1891 WITH RESPECT TO A BARGAINING UNIT OF ALL PAINTERS AND PAINTERS' APPRENTICES IN THE EMPLOY OF C. ROMANELLI DRYWALL LTD. IN THE REGIONAL MUNICIPALITY OF OTTAWA - CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN. (SEE BOARD FILE No. 2618-71-R).

5. IN A LETTER DATED OCTOBER 20, 1972, WHICH ACCOMPANIED THIS APPLICATION FOR A DECLARATION TERMINATING BARGAINING RIGHTS, THE APPLICANT REQUESTED THAT THE BOARD INQUIRE INTO THE CERTIFICATION PROCEEDING AND DECLARE THAT THE RESPONDENT TRADE UNION NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT ON THE BASIS THAT THE CERTIFICATE WAS OBTAINED BY FRAUD. THE APPLICANT HAS SET FORTH THE ALLEGATIONS WHICH, PRESUMABLY, IT CLAIMS TO CONSTITUTE FRAUD. THE APPLICANT ALSO FILED A FORM 54, DECLARATION CONCERNING MEMBERSHIP DOCUMENTS, CONSTRUCTION INDUSTRY, WITH RESPECT TO A RESPONDENT STATED AS BEING "DURABLE DRYWALL" TOGETHER WITH FOUR COMBINATION APPLICATIONS FOR MEMBERSHIP.



6. THE RESPONDENT TRADE UNION SUBMITTED THAT THE APPLICANT LACKED THE NECESSARY STATUS TO BRING THIS APPLICATION, AND, IN THE ALTERNATIVE, ASSUMING BUT WITHOUT ADMITTING THAT THE APPLICANT HAS THE NECESSARY STATUS TO BRING THIS APPLICATION, DENIED THE ALLEGATIONS OF THE APPLICANT AND PUT THE APPLICANT TO THE STRICT PROOF THEREOF AND DENIED THAT IT HAD OBTAINED A CERTIFICATE BY FRAUD WITHIN THE MEANING OF SECTION 50 OF THE LABOUR RELATIONS ACT. THE RESPONDENT EMPLOYER AND THE INTERVENER DENIED THE ALLEGATIONS CONTAINED IN THE APPLICATION AND PUT THE APPLICANT TO THE STRICT PROOF THEREOF.

7. SECTION 50 OF THE LABOUR RELATIONS ACT STATES:

IF A TRADE UNION HAS OBTAINED A CERTIFICATE BY FRAUD, THE BOARD MAY AT ANY TIME DECLARE THAT THE TRADE UNION NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT AND, UPON THE MAKING OF SUCH A DECLARATION, THE TRADE UNION IS NOT ENTITLED TO CLAIM ANY RIGHTS OR PRIVILEGES FLOWING FROM CERTIFICATION AND, IF IT HAS MADE A COLLECTIVE IN THE BARGAINING UNIT, THE COLLECTIVE AGREEMENT IS VOID.

8. THE BOARD FINDS THAT THE APPLICANT WAS A STRANGER TO THE PROCEEDING IN WHICH THE BOARD ISSUED A CERTIFICATE TO THE RESPONDENT TRADE UNION. (SEE BOARD FILE NO. 2618-72-R). IN THESE CIRCUMSTANCES, MAY IT BE SAID THAT THE APPLICANT HAS THE STATUS TO BRING THIS APPLICATION UNDER SECTION 50 OF THE LABOUR RELATIONS ACT FOR A DECLARATION THAT THE RESPONDENT TRADE UNION NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT FOR WHICH IT WAS CERTIFIED AS THE BARGAINING AGENT?

9. SECTION 50 OF THE LABOUR RELATIONS ACT DOES NOT STATE WHO MAY APPLY UNDER ITS PROVISIONS. IT APPEARS TO THE BOARD, HOWEVER, THAT HAVING REGARD TO THE WHOLE SCHEME OF THE LABOUR RELATIONS ACT THAT THE ONLY PERSONS ENTITLED TO APPLY UNDER SECTION 50 ARE THOSE WHO WERE DIRECTLY AFFECTED BY THE CERTIFICATE WHEN IT WAS ISSUED, FOR EXAMPLE, THE RESPONDENT TRADE UNION, THE RESPONDENT EMPLOYER AND THE EMPLOYEES. THE APPLICANT WAS AND REMAINS A STRANGER TO THE CERTIFICATION PROCEEDING UPON WHICH THIS APPLICATION IS BASED. HAVING REGARD TO THE FOREGOING, THE BOARD FINDS THAT THE APPLICANT DOES NOT HAVE THE STATUS TO BRING THIS APPLICATION UNDER SECTION 50 OF THE LABOUR RELATIONS ACT. REFERENCE IS MADE TO THE DOMINION WORTHWHILE REALTIES CASE, (UNREPORTED) BOARD FILE NO. 17765-70-R, DECISION DATED FEBRUARY 8, 1971; THE FORMRITE FORMING LTD. CASE, [1971] OLRB REP. 49 AND TO THE DECISION OF THE SASKATCHEWAN COURT OF APPEAL IN REGINA, REL. I.W.A. LOCAL 1-184 AND SASKATCHEWAN LABOUR RELATIONS BOARD AND WOODLANDS ENTERPRISES LTD. ET AL. 69 CLLC 914,204.

10. THE APPLICANT HAS MADE THE SERIOUS CHARGE OF FRAUD AGAINST THE RESPONDENTS AND THE INTERVENER. EVEN IF THE APPLICANT HAD THE

STATUS TO MAKE THIS ALLEGATION IN THIS PROCEEDING THE BOARD FINDS THAT THERE IS NOTHING BEFORE IT THAT WOULD INDICATE FRAUD WITHIN THE MEANING OF SECTION 50 BY EITHER THE RESPONDENTS OR THE INTERVENER.

11. IN THE RESULT, THIS PROCEEDING IS TERMINATED.

2618-72-R: INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES  
LOCAL UNION 1891 (APPLICANT) V. C. ROMANELLI DRYWALL LTD. (RESPONDENT).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS H. J. F. ADE  
AND E. BOYER.

DECISION OF THE BOARD: MARCH 8, 1973.

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2. IN A LETTER DATED OCTOBER 20, 1972, THE OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION, LOCAL 124 (HEREINAFTER REFERRED TO AS "LOCAL 124") STATED THAT IT IS AND WAS A TRADE UNION KNOWN TO BOTH THE APPLICANT AND THE RESPONDENT AS CLAIMING TO BE THE BARGAINING AGENT OF AND TO REPRESENT SOME OF THE EMPLOYEES AFFECTED BY THE APPLICATION. LOCAL 124 SUBMITTED THAT IT SHOULD HAVE RECEIVED NOTICE OF THE APPLICATION AND HAVE BEEN GIVEN AN OPPORTUNITY TO INTERVENE IN THIS PROCEEDING.

3. LOCAL 124 REQUESTED THE BOARD TO INQUIRE INTO THIS MATTER AND DECLARE THAT THE APPLICANT NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT ON THE BASIS THAT THIS CERTIFICATION WAS OBTAINED BY FRAUD. IN THE ALTERNATIVE, LOCAL 124, PURSUANT TO SECTION 95 OF THE LABOUR RELATIONS ACT, REQUESTED THE BOARD TO RECONSIDER ITS DECISION IN THE CERTIFICATION PROCEEDING AND RE-OPEN THE MATTER IN ORDER TO PERMIT LOCAL 124 TO SHOW CAUSE WHY THE APPLICANT SHOULD NOT HAVE BEEN CERTIFIED.

4. IN SUPPORT OF THESE REQUESTS, LOCAL 124 ALLEGED THAT BOTH THE APPLICANT AND THE RESPONDENT WERE AWARE THAT LOCAL 124 WAS A TRADE UNION WHICH CLAIMED TO BE THE BARGAINING AGENT OF AND CLAIMED TO REPRESENT SOME OF THE EMPLOYEES AFFECTED BY THE APPLICATION. LOCAL 124 ALSO ALLEGED THAT THE BARGAINING UNIT DETERMINED BY THE BOARD WAS NOT APPROPRIATE AND THAT SEVERAL OF THE EMPLOYEES IN THE BARGAINING UNIT PERFORMED WORK WHICH IS PROPERLY WITHIN THE CRAFT JURISDICTION OF LOCAL 124 ACCORDING TO ESTABLISHED TRADE UNION PRACTICE.

5. LOCAL 124 FURTHER ALLEGED THAT THERE WAS COLLUSION BETWEEN THE APPLICANT AND THE RESPONDENT IN THE ORIGINATION AND PROCESSING OF THE APPLICATION BEFORE THE BOARD.

6. THE APPLICANT ADOPTED THE POSITION THAT LOCAL 124, AT ALL MATERIAL TIMES, WAS AND REMAINS A STRANGER TO THIS PROCEEDING WHICH, IN THE VIEW OF THE APPLICANT, WERE COMPLETED ON OCTOBER 10, 1972.

ACCORDINGLY, THE APPLICANT ARGUED THAT LOCAL 124 LACKS THE NECESSARY STATUS TO REQUEST THE BOARD TO RECONSIDER ITS DECISION DATED OCTOBER 10, 1972.

7. IN ADDITION, THE APPLICANT ADOPTED FURTHER ARGUMENTS WHICH WERE BASED UPON THE ASSUMPTION, WITHOUT THE ADMISSION, THAT LOCAL 124 HAS ANY STATUS IN THIS PROCEEDING. IT WAS THE POSITION OF THE APPLICANT THAT, EVEN BASED UPON THIS ASSUMPTION, THE REQUEST OF LOCAL 124 THAT THE BOARD RECONSIDER ITS DECISION DATED OCTOBER 10, 1972 OUGHT TO BE DENIED. IN THE LIGHT OF THE REASONS SET FORTH BELOW, IT IS NOT NECESSARY FOR THE BOARD TO CONSIDER THEIR FURTHER ARGUMENTS ADVANCED BY THE APPLICANT.

8. IN A LETTER DATED DECEMBER 19, 1972, LOCAL 124 ADMITTED THAT IT WAS NOT A PARTY TO THIS PROCEEDING. HOWEVER, LOCAL 124 ALLEGED THAT IT SHOULD HAVE BEEN A PARTY AND THAT HAD IT BEEN AWARE OF THE PROCEEDING IT WOULD, IN FACT, HAVE BEEN A PARTY SINCE IT WOULD HAVE REQUESTED AN OPPORTUNITY TO INTERVENE. IN THE SAME LETTER, LOCAL 124 STATED THAT, IN THE ALTERNATIVE, SHOULD THE BOARD DETERMINE THAT LOCAL 124 DOES NOT HAVE THE STATUS TO REQUEST A RECONSIDERATION UNDER SECTION 95 OF THE LABOUR RELATIONS ACT, THEN, THE BOARD SHOULD CONDUCT AN INQUIRY INTO THE ALLEGATIONS TO DETERMINE WHETHER IT SHOULD RECONSIDER ITS DECISION, AND THAT PURSUANT TO SECTION 54 OF THE BOARD'S RULES OF PROCEDURE, LOCAL 124 BE INVITED TO INTERVENE.

9. IN A FURTHER LETTER TO THE BOARD DATED FEBRUARY 20, 1973, LOCAL 124 STATED THAT IT WAS ITS POSITION THAT SOME OF THE EMPLOYEES WERE MEMBERS IN GOOD STANDING OF THE PLASTERERS' UNION AND THAT THIS WAS KNOWN TO THE APPLICANT AND THE RESPONDENT. ALSO LOCAL 124 CONCEDED THAT IT "WAS NEITHER CERTIFIED NOR WAS IT RECOGNIZED BY MEANS OF VOLUNTARY RECOGNITION".

10. THE BOARD HAS CONSIDERED ALL THE REPRESENTATIONS OF THE PARTIES. THE BOARD NOTES THE ADMISSION OF LOCAL 124 THAT IT "WAS NEITHER CERTIFIED NOR WAS IT RECOGNIZED BY MEANS OF VOLUNTARY RECOGNITION" AND THAT IT WAS NOT A PARTY TO THIS PROCEEDING.

11. THE ARGUMENT OF LOCAL 124 REGARDING THE DISCRETION OF THE BOARD UNDER SECTION 54 OF THE BOARD'S RULES OF PROCEDURE IS PREDICATED UPON THE ASSUMPTION THAT THERE IS PRESENTLY A PROCEEDING BEFORE THE BOARD TO WHICH LOCAL 124 MAY BE MADE A PARTY. THE PROCEEDING IN WHICH THE APPLICANT APPLIED FOR CERTIFICATION WAS COMPLETED UPON THE GRANTING OF THE CERTIFICATE TO THE APPLICANT ON OCTOBER 10, 1972. THERE IS THEREFORE NO PROCEEDING TO WHICH LOCAL 124 MAY BE ADDED AS A PARTY. LOCAL 124 WAS AT ALL TIMES AND REMAINS A STRANGER TO THIS PROCEEDING. IN THIS REGARD, REFERENCE MAY BE HAD TO THE DOMINION WORTHWHILE REALTIES CASE, (UNREPORTED) BOARD FILE NO. 17765-70-R, DECISION DATED FEBRUARY 8, 1971; THE FORMRITE FORMING LTD. CASE, [1971] OLRB REP. 49 AND THE SKYVIEW FORMING LIMITED CASE, [1970] OLRB REP. 471.



12. LOCAL 124 CLAIMS THAT IT SHOULD HAVE RECEIVED NOTICE OF THIS PROCEEDING. THERE WAS NOTHING BEFORE THE BOARD TO INDICATE THAT LOCAL 124 HAD ANY INTEREST IN THIS PROCEEDING. CONSEQUENTLY, THE BOARD DID NOT NOTIFY LOCAL 124 OF THIS PROCEEDING. PARAGRAPH NINE OF FORM 49, APPLICATION FOR CERTIFICATION, CONSTRUCTION INDUSTRY, STATES:

"THE NAME AND ADDRESS OF ANY TRADE UNION OR COUNCIL OF TRADE UNIONS KNOWN TO THE APPLICANT AS CLAIMING TO BE THE BARGAINING AGENT OF, OR AS CLAIMING TO REPRESENT, ANY EMPLOYEES WHO MAY BE AFFECTED BY THIS APPLICATION:"

THE ANSWER OF THE APPLICANT TO PARAGRAPH NINE WAS "NONE".

13. LOCAL 124 HAS CONCEDED THAT IT WAS NOT THE BARGAINING AGENT OF ANY EMPLOYEES AFFECTED BY THIS PROCEEDING. MAY IT BE SAID, ON THE FACTS BEFORE THE BOARD, THAT LOCAL 124 REPRESENTED ANY EMPLOYEES WHO WERE AFFECTED BY THIS PROCEEDING? LOCAL 124 CLAIMS MEMBERSHIP AMONG THE EMPLOYEES AFFECTED BY THIS PROCEEDING. HOWEVER, MEMBERSHIP OUGHT NOT TO BE CONFUSED WITH THE CONCEPT OF REPRESENTATION. IN THIS REGARD, REFERENCE IS MADE TO THE BENTLEY'S SPORTING GOODS LTD. CASE, 59 CLLC ¶18,129. THE BOARD FINDS THAT IT MAY NOT BE SAID THAT LOCAL 124 REPRESENTED ANY EMPLOYEES AFFECTED BY THIS PROCEEDING. IN ADDITION, THE FACT THAT LOCAL 124 CLAIMS CRAFT JURISDICTION FOR WORK PERFORMED BY EMPLOYEES IN THE BARGAINING UNIT IS NOT A REASON FOR NOTIFYING LOCAL 124 OF THIS PROCEEDING. HAVING REGARD TO THE FOREGOING, THE BOARD FINDS THAT LOCAL 124 WAS NOT ENTITLED TO NOTICE OF THIS PROCEEDING.

14. LOCAL 124 HAS MADE THE SERIOUS CHARGE OF FRAUD AGAINST THE PARTIES TO THIS PROCEEDING. EVEN IF LOCAL 124 HAD THE STATUS TO MAKE THIS ALLEGATION IN THIS PROCEEDING, THE BOARD FINDS THAT THERE IS NOTHING BEFORE IT THAT WOULD INDICATE FRAUD WITHIN THE MEANING OF SECTION 50 BY EITHER PARTY TO THIS PROCEEDING.

15. ON THE BASIS OF ALL THE MATERIAL BEFORE IT, THE BOARD FINDS THAT LOCAL 124 HAS NO STATUS IN THIS PROCEEDING, EITHER TO REQUEST THAT THE BOARD DECLARE THAT THE APPLICANT NO LONGER REPRESENTS THE EMPLOYEES DEFINED IN THE CERTIFICATE ISSUED IN THIS MATTER ON OCTOBER 10, 1972, ON THE GROUNDS THAT THE CERTIFICATION WAS OBTAINED BY FRAUD, OR, TO REQUEST THE BOARD TO RECONSIDER ITS DECISION AND RE-OPEN THE MATTER IN ORDER TO PERMIT LOCAL 124 TO SHOW CAUSE WHY THE APPLICANT SHOULD NOT HAVE BEEN CERTIFIED.

16. THE BOARD AFFIRMS ITS DECISION DATED OCTOBER 10, 1972 AND THE CERTIFICATE ISSUED THEREUNDER.

3243-72-R: GRAND RIVER VALLEY DISTRICT COUNCIL UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. LOCAL UNIONS 498 BRANTFORD, 949 CAMBRIDGE (HESPELER) 1940 KITCHENER, 2173 GUELPH (RESPONDENT).

RE: KITCHENER-WATERLOO CONSTRUCTION ASSOCIATION AND THE INDIVIDUAL EMPLOYERS.

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND E. BOYER.

DECISION OF THE BOARD: MARCH 9, 1973.

1. THIS IS AN APPLICATION BROUGHT UNDER SECTION 54 OF THE LABOUR RELATIONS ACT FOR A DECLARATION THAT THE APPLICANT HAS ACQUIRED THE RIGHTS, PRIVILEGES AND DUTIES OF THE RESPONDENT LOCAL UNIONS.

2. THE APPLICANT COUNCIL IS NOT A CERTIFIED COUNCIL OF TRADE UNIONS WITHIN THE MEANING OF SECTION 1(1)(D) OF THE ACT. HENCE, THE COUNCIL CANNOT BE TREATED AS A TRADE UNION UNDER THE ACT. IT FOLLOWS THAT IT CANNOT BE THE RECIPIENT OF A BOARD DECLARATION PURSUANT TO SECTION 54. SEE GULF OIL CANADA LTD., O.L.R.B. M.R., FEBRUARY 1970, 1380; LAKE ONTARIO DISTRICT COUNCIL OF CARPENTERS, O.L.R.B. M.R. JANUARY, 1969, 1041.

3. HAVING REGARD TO THE FOREGOING, THE APPLICANT DOES NOT, IN THE OPINION OF THE BOARD, MAKE OUT A PRIMA FACIE CASE FOR THE REMEDY REQUESTED AND, PURSUANT TO SECTION 46(1) OF THE BOARD'S RULES OF PROCEDURE, THE APPLICATION IS HEREBY DISMISSED.

2314-72-R: THE TERRAZZO TILE AND MARBLE GUILD OF ONTARIO (APPLICANT) V. THE ONTARIO PROVINCIAL CONFERENCE MARBLE, TILE, TERRAZZO, CEMENT MASONS, RESILIENT FLOOR LAYERS AND THEIR HELPERS OF THE BRICKLAYERS, MASONS & PLASTERERS INTERNATIONAL UNION OF AMERICA (RESPONDENT) V. ELECTRICAL POWER SYSTEMS CONSTRUCTION ASSOCIATION (INTERVENER).

BEFORE: D.E. FRANKS, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND H.J.F. ADE.

APPEARANCES AT THE HEARING: JOHN P. SANDERSON AND VIC BOZZATO FOR THE APPLICANT; DANNY DEMONTE FOR THE RESPONDENT; H.A. BERESFORD AND G. A. PICKELL FOR THE INTERVENER.

DECISION OF THE BOARD: MARCH 12, 1973.

1. THIS IS AN APPLICATION FOR ACCREDITATION IN WHICH THE TERRAZZO TILE AND MARBLE GUILD OF ONTARIO (HEREINAFTER REFERRED TO AS THE "GUILD") IS SEEKING ACCREDITATION AS THE BARGAINING AGENT FOR A UNIT OF EMPLOYERS WHO BARGAIN WITH THE RESPONDENT THE ONTARIO PROVINCIAL CONFERENCE MARBLE, TILE, TERRAZZO, CEMENT MASONS, RESILIENT FLOOR LAYERS AND THEIR HELPERS OF THE BRICKLAYERS, MASONS & PLASTERERS INTERNATIONAL UNION OF AMERICA, IN RELATION TO CERTAIN OF THEIR EMPLOYEES. THE APPLICANT FILED WITH ITS APPLICATION A DOCUMENT ENTITLED "THE TERRAZZO TILE AND MARBLE GUILD OF ONTARIO BY-LAWS" AS REQUIRED BY SECTION 78 OF THE BOARD'S RULES OF PROCEDURE.

2. THE BY-LAW FILED WITH THE APPLICATION IS UNSIGNED AND UNDATED. AT THE HEARING IN THIS MATTER THE APPLICANT CALLED MR. VICTOR BOZZATO TO IDENTIFY THIS DOCUMENT. MR. BOZZATO HAS BEEN A CONTRACTOR ENGAGED IN THE TERRAZZO BUSINESS SINCE 1947. HE FURTHER IDENTIFIED HIMSELF AS THE SECRETARY-TREASURER OF THE GUILD. MR. BOZZATO'S EVIDENCE CONCERNING THE APPLICANT WAS THAT THE GUILD WAS FORMED A NUMBER OF YEARS AGO APPARENTLY AS AN UNINCORPORATED ASSOCIATION. HE COULD NOT, HOWEVER, GIVE THE DATE WHEN THE GUILD WAS FORMED. HIS EVIDENCE WAS THAT SOMETIME AFTER THE FORMATION OF THE GUILD, APPARENTLY DUE TO A LACK OF INTEREST, THE GUILD BECAME A DORMANT ORGANIZATION. SOMETIME IN LATE 1971 THERE APPEARS TO HAVE BEEN A RENEWAL OF INTEREST IN THE GUILD, APPARENTLY IN RELATION TO THE ACCREDITATION PROVISIONS WHICH WERE AT THAT TIME IN THE PROCESS OF BEING INTRODUCED INTO THE LABOUR RELATIONS ACT. MR. BOZZATO TESTIFIED THAT A MEETING OF THE "EXECUTIVE" OF THE GUILD WAS HELD IN LATE 1971 AT WHICH MEETING CONSIDERATION WAS GIVEN AS TO WHAT SHOULD BE DONE UPON THE INTRODUCTION OF THE ACCREDITATION LEGISLATION. APPARENTLY THE "EXECUTIVE" DECIDED TO HOLD A MEETING OF THE GUILD. THE "MEMBERS" OF THE GUILD WERE SENT NOTICE OF THIS MEETING AS WERE OTHER CONTRACTORS KNOWN TO BE INVOLVED IN TERRAZZO CONTRACTING THROUGHOUT THE PROVINCE. A MEETING WAS HELD ON APRIL 14, 1972. AT THIS MEETING APPROXIMATELY TWENTY CONTRACTORS WERE PRESENT. IT IS FROM THIS MEETING ON APRIL 14, 1972, THAT THE PRESENT DOCUMENT ENTITLED BY-LAWS IS DERIVED. MR. BOZZATO'S EVIDENCE WAS THAT THIS DOCUMENT WAS ACCEPTED BY THOSE PRESENT AT THAT MEETING.

3. COUNSEL FOR THE APPLICANT VERY CANDIDLY INFORMED THE BOARD THAT THE ONLY DOCUMENT HE COULD TENDER CONCERNING THE STATUS OF THE APPLICANT IS THE BY-LAW WHICH WAS FILED WITH THE APPLICATION. IT APPEARS THAT THE ORIGINAL DOCUMENTS CONCERNING THE FORMATION OF THE GUILD ARE NOT AVAILABLE AND APPARENTLY CANNOT BE FOUND. IN THIS REGARD MR. BOZZATO WAS FURTHER QUESTIONED CONCERNING HIS EVIDENCE THAT THE "EXECUTIVE" OF THE GUILD MET IN LATE 1971 AND THAT A MEETING OF "MEMBERS" WAS HELD IN APRIL 1972. HOWEVER, NO ATTEMPT WAS MADE BY MR. BOZZATO TO EXPLAIN HOW THE "EXECUTIVE" AND "MEMBERS" OF THE GUILD, WHICH HE HAD DESCRIBED AS BEING DORMANT OR INACTIVE FOR A NUMBER OF YEARS, WERE KNOWN TO BE MEMBERS OF THE GUILD. INDEED, MR. BOZZATO'S ONLY ATTEMPT AT EXPLANATION WAS THAT THE MEETING IN APRIL 1971 CONSISTED OF EMPLOYERS WHO WERE KNOWN TO BE TERRAZZO CONTRACTORS.

4. COUNSEL FOR THE APPLICANT ARGUED THAT THE BOARD IS ENTITLED TO FIND THAT THE APPLICANT HAS THE STATUS TO MAKE THIS APPLICATION ON EITHER OF TWO GROUNDS. EITHER THERE IS SUFFICIENT EVIDENCE TO SHOW THAT AN ORGANIZATION FORMED FOR THE PURPOSE OF REPRESENTING EMPLOYERS IN EXISTENCE PRIOR TO APRIL 1971 (THAT IS THE OLD GUILD), OR THE EVENTS WHICH OCCURRED AT THE MEETING IN APRIL 1972 ON THEIR OWN SHOWED THE FORMATION OF AN EMPLOYERS' ORGANIZATION WITH STATUS TO MAKE THIS APPLICATION.

5. BEFORE DEALING WITH THE ARGUMENTS OF THE APPLICANT IN THIS MATTER WE WISH TO EXAMINE THE RELATIVE PROVISIONS OF THE LABOUR RELATIONS ACT. THE TERM "EMPLOYERS ORGANIZATION" IS DEFINED BY SECTION 1(1)(H) AS FOLLOWS:



1.-(1)(H) "EMPLOYERS' ORGANIZATION" MEANS  
AN ORGANIZATION OF EMPLOYERS FORMED  
FOR PURPOSES THAT INCLUDE THE REGULA-  
TION OF RELATIONS BETWEEN EMPLOYERS  
AND EMPLOYEES AND INCLUDES AN  
ACCREDITED EMPLOYERS' ORGANIZATION

AND FOR THE ACCREDITATION PROVISIONS OF THE LABOUR RELATIONS ACT THIS  
DEFINITION IS FURTHER REFINED BY SECTION 106(D) AND (C) AS FOLLOWS:

106.(D) "EMPLOYERS' ORGANIZATION" MEANS AN  
ORGANIZATION THAT IS FORMED FOR THE  
PURPOSE OF REPRESENTING OR REPRESENTS  
EMPLOYERS AS DEFINED IN CLAUSE C;

(C) "EMPLOYER" MEANS A PERSON WHO OPERATES  
A BUSINESS IN THE CONSTRUCTION INDUSTRY,  
AND FOR PURPOSES OF AN APPLICATION FOR  
ACCREDITATION MEANS AN EMPLOYER FOR  
WHOSE EMPLOYEES A TRADE UNION OR COUNCIL  
OF TRADE UNIONS AFFECTED BY THE APPLICA-  
TION HAS BARGAINING RIGHTS IN A PARTICULAR  
GEOGRAPHIC AREA AND SECTOR OR AREAS OR  
SECTORS OR PARTS THEREOF;

IT IS THUS APPARENT THAT THE BOARD MUST DETERMINE WHETHER OR NOT THE  
APPLICANT IS AN EMPLOYERS' ORGANIZATION WITHIN THE MEANING OF SECTION  
1(1)(H) BEFORE THE APPLICANT IS ENTITLED TO BE ACCREDITED. HOWEVER,  
IN ADDITION TO THE REQUIREMENT SET OUT IN SECTION 1(1)(H) OF THE ACT,  
THE BOARD IN AN ACCREDITED APPLICATION MUST MAKE THE DETERMINATION SET  
OUT IN THE FIRST PART OF SUBSECTION 3 OF SECTION 115. SECTION 115(3)  
OF THE ACT READS AS FOLLOWS:

115.-(3) BEFORE ACCREDITING AN EMPLOYERS'  
ORGANIZATION UNDER SUBSECTION 2, THE BOARD  
SHALL SATISFY ITSELF THAT THE EMPLOYERS'  
ORGANIZATION IS A PROPERLY CONSTITUTED  
ORGANIZATION AND THAT EACH OF THE EMPLOYERS  
WHOM IT REPRESENTS HAS VESTED APPROPRIATE  
AUTHORITY IN THE ORGANIZATION TO ENABLE IT  
TO DISCHARGE THE RESPONSIBILITIES OF AN  
ACCREDITED BARGAINING AGENT.

THUS, ONCE THE BOARD FINDS THAT AN APPLICANT FOR ACCREDITATION IS AN  
EMPLOYERS' ORGANIZATION WITHIN THE MEANING OF SECTION 1(1)(H) OF THE  
ACT, THE BOARD MUST THEN FIND THAT SUCH AN ORGANIZATION IS A "PROPERLY  
CONSTITUTED ORGANIZATION".

6. THE FIRST BRANCH OF THE APPLICANT'S ARGUMENT IS THAT THERE IS  
EVIDENCE OF THE FORMATION OF AN EMPLOYERS' ORGANIZATION PRIOR TO APRIL

1972. HOWEVER, AS OUTLINED ABOVE NO EVIDENCE IN WRITING CONCERNING THE FORMATION OF THIS ORGANIZATION OR CONCERNING THE RELATIONSHIP BETWEEN THE MEMBERS OF THAT ORGANIZATION HAS BEEN PRESENTED TO THE BOARD. IN THIS REGARD THE BOARD IS OF THE OPINION THAT IT IS NECESSARY FOR AN APPLICANT EMPLOYERS' ORGANIZATION TO PROVIDE WRITTEN EVIDENCE CONCERNING THE FORMATION OF THE ASSOCIATION, AND THE RELATIONSHIP BETWEEN THE VARIOUS MEMBERS OR PERSONS IN THE ASSOCIATION. THIS REQUIREMENT IS, OF COURSE, SIMILAR TO THE REQUIREMENT WHICH THE BOARD IMPOSES UPON A TRADE UNION SEEKING TO SHOW THAT IT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE ACT. WE ARE OF THE OPINION THAT THE REASONS FOR THIS REQUIREMENT WITH RESPECT TO TRADE UNIONS ARE APPLICABLE TO CASES INVOLVING EMPLOYERS' ORGANIZATIONS WHICH SEEK TO REPRESENT EMPLOYERS AS AN EXCLUSIVE BARGAINING AGENT FOR EMPLOYERS IN A UNIT OF EMPLOYERS. THE BOARD IS THEREFORE NOT PREPARED TO FIND THAT THE APPLICANT IS AN EMPLOYERS' ORGANIZATION WITHIN THE MEANING OF SECTION 1(1)(H) OF THE ACT ON THE ARGUMENT THAT SUCH AN ORGANIZATION EXISTED PRIOR TO APRIL 1972.

7. IT THUS APPEARS THAT THE APPLICANT'S CASE RESTS THE SECOND BRANCH OF THE ARGUMENT PRESENTED TO THE BOARD, NAMELY, THAT THE EVENTS IN APRIL 1972, DEMONSTRATED THE FORMATION OF AN EMPLOYERS' ORGANIZATION. IN THIS REGARD THE APPLICANT HAS PRESENTED THE BOARD WITH A DOCUMENT IN WRITING SHOWING THE RELATIONSHIP BETWEEN THE MEMBERS OF THAT ASSOCIATION, AND WERE IT POSSIBLE FOR THIS DOCUMENT TO STAND ON ITS OWN THE BOARD MIGHT BE LEAD TO CONCLUDE THAT THE DOCUMENT ENTITLED "BY-LAWS" IS SUFFICIENT EVIDENCE FOR THE BOARD TO MAKE A FINDING THAT THE APPLICANT IS AN EMPLOYERS' ORGANIZATION WITHIN THE MEANING OF SECTION 1(1)(H) OF THE ACT. HOWEVER, THIS DOCUMENT CANNOT STAND ON ITS OWN. SINCE THIS DOCUMENT IS UNSIGNED AND UNDATED IT MUST BE IDENTIFIED BY SOME WITNESS. HOWEVER, IN ORDER FOR COUNSEL FOR THE FORMATION OF AN ORGANIZATION ON APRIL 14, 1972, HE MUST IMPEACH THE EVIDENCE OF HIS WITNESS CONCERNING THE IDENTIFICATION OF THE DOCUMENT ENTITLED BY-LAWS. THAT DOCUMENT WAS IDENTIFIED AS THE RESULTS OF EFFORTS BY AN ORGANIZATION THAT EXISTED PRIOR TO APRIL 14, 1972, AND THIS CANNOT BE SAID TO BE A DOCUMENT RELATING TO THE FORMATION OF AN ORGANIZATION OF EMPLOYERS FOR THE PURPOSES THAT INCLUDE THE REGULATION OF RELATIONS BETWEEN EMPLOYERS AND EMPLOYEES ON APRIL 14, 1972. THUS, THE EVIDENCE DOES NOT SUPPORT THE ALLEGATION OF COUNSEL FOR THE APPLICANT THAT AN ORGANIZATION WAS FORMED ON APRIL 14, 1972.

8. HOWEVER, EVEN IF WE WERE TO ASSUME A FINDING THAT THE DOCUMENT ENTITLED BY-LAWS CAN STAND ON ITS OWN AS EVIDENCE OF THE FORMATION OF AN EMPLOYERS' ORGANIZATION, THERE IS STILL A PROBLEM WHICH THE BOARD FINDS INSURMOUNTABLE. THERE IS NO DOUBT THAT AN ORGANIZATION ENTITLED THE TERRAZZO TILE AND MARBLE GUILD OF ONTARIO EXISTED PRIOR TO THE EVENTS IN APRIL 1972. ON THE OTHER HAND VERY LITTLE IS KNOWN ABOUT THAT ORGANIZATION. THE DOCUMENT IS TENDERED AS THE BY-LAWS OF THE TERRAZZO TILE AND MARBLE GUILD OF ONTARIO, AND ALTHOUGH IT IS MORE THAN A BY-LAW IT DOES NOT DEAL WITH THE RELATIONSHIP BETWEEN THE PREVIOUS ORGANIZATION AND ANY ORGANIZATION WHICH MIGHT HAVE COME INTO EXISTENCE ON APRIL 14,

1972. SINCE IT IS APPARENT THAT THERE IS SOME AMBIGUITY ABOUT THE RELATIONSHIP BETWEEN THE OLD GUILD AND ANY GUILD FORMED IN APRIL 1972, WE ARE NOT PREPARED TO FIND THAT THE EVENTS OF APRIL 1972 RESULTED IN AN ORGANIZATION WHICH IS A PROPERLY CONSTITUTED ORGANIZATION WITHIN THE MEANING OF SUBSECTION 3 OF SECTION 115 OF THE ACT. THE QUESTIONS THAT WOULD BE RAISED BY THE REAPPEARANCE OF THE CONSTITUTION OF THE OLD GUILD OR AN ORGANIZATION PURPORTING TO BE THE OLD GUILD, ARE NOT ACADEMIC IN THIS REGARD. MR. BOZZATO'S REFERENCE TO A MEETING OF THE "EXECUTIVE" AND A MEETING OF "MEMBERS" BRING THE RELATIONSHIP BETWEEN THE OLD GUILD AND ANY GUILD FORMED IN APRIL 1972 INTO DIRECT CONFRONTATION. HAD THE BY-LAW TENDERED WITH THIS APPLICATION DEALT WITH ITS RELATIONSHIP TO THE ORGANIZATION WHICH HAS THE SAME NAME THEN PERHAPS THE OUTCOME IN THIS CASE WOULD BE DIFFERENT.

9. FOR THE FOREGOING REASONS THE BOARD IS OF THE OPINION THAT IT CANNOT FIND THAT THE APPLICANT ORGANIZATION IS AN ORGANIZATION OF EMPLOYERS FOR THE PURPOSES OF SECTION 1(1)(H) OF THE ACT, AND HAS BEEN PROPERLY CONSTITUTED WITHIN THE MEANING OF SECTION 115(3) OF THE ACT. THIS APPLICATION IS THEREFORE DISMISSED.

1970-72-R: NURSES' ASSOCIATION PETERBOROUGH CIVIC HOSPITAL (APPLICANT) V. PETERBOROUGH CIVIC HOSPITAL (RESPONDENT) V. ONTARIO BRANCH, CANADIAN PHYSIOTHERAPY ASSOCIATION (INTERVENER).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS J.D. BELL AND O. HODGES.

DECISION OF O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBER O. HODGES:  
MARCH 13, 1973.

. . .

2. IN THIS MATTER AN ISSUE AROSE AS TO WHETHER HEAD NURSES EXERCISE MANAGERIAL FUNCTIONS AND WERE THEREBY EXCLUDED FROM THE BARGAINING UNIT CLAIMED BY THE APPLICANT TO BE APPROPRIATE. THE ISSUE RAISED OCCURS FREQUENTLY IN APPLICATIONS WITH RESPECT TO NURSES, BUT IN ADDITION, IT IS OF WIDER INTEREST BECAUSE IT DEALS WITH THE MANAGERIAL FUNCTIONS OF PERSONS IN "WHITE COLLAR" BARGAINING UNITS.

3. IN EARLIER DAYS WHEN THIS BOARD WAS FORMULATING CRITERIA FOR DETERMINING MANAGERIAL FUNCTIONS IT WAS CONFRONTED IN THE MAJORITY OF CASES WITH INDUSTRIAL SITUATIONS. LABOUR RELATIONS HAS NOW EVOLVED TO THE POINT WHERE WE ARE PRESENTLY BEING CONFRONTED WITH INCREASING APPLICATIONS FOR WHITE COLLAR BARGAINING UNITS, PARTICULARLY IN MUNICIPALITIES AND OTHER GOVERNMENT BODIES AND ALSO AT UNIVERSITIES.

4. THE ORGANIZATION OF INDUSTRY IN MANY INSTANCES HAS EVOLVED TO THE POINT WHERE IT DIFFERS FROM THE PERIOD WHEN THE BOARD WAS FIRST FORMULATING ITS VIEWS ABOUT MANAGERIAL FUNCTIONS. SOME ACCOUNT MUST BE



TAKEN OF THE CHANGING SITUATION. FURTHER, WHILE MANY WHITE COLLAR BARGAINING UNITS ARE SIMILAR TO BARGAINING UNITS IN THE INDUSTRIAL SECTOR, THERE ARE MANY INSTANCES WHERE THE INDUSTRIAL MODEL, WHICH WE HAVE DEVELOPED AT THIS BOARD, IS NOT APPLICABLE TO THE WHITE COLLAR MODEL. IT IS THEREFORE NECESSARY THAT OUR DECISIONS WITH RESPECT TO BARGAINING UNITS AND MANAGERIAL PERSONNEL REFLECT THE NEW AND EVOLVING SITUATIONS RATHER THAN REFLECT AN OVERSIMPLIFIED APPLICATION OF THE FORMER INDUSTRIAL CRITERIA TO THE WHITE COLLAR AREA.

5. THAT APPROACH IS NOT UNUSUAL, AND WE HAVE RECOGNIZED THAT CERTAIN INDUSTRIES AND CERTAIN AREAS REQUIRE SEPARATE TREATMENT. FOR EXAMPLE, IN THE CONSTRUCTION INDUSTRY AND IN THE PRINTING TRADES, WORKING FOREMEN ARE GENERALLY INCLUDED IN THE BARGAINING UNIT TO REFLECT THE PECULARITIES OF THOSE INDUSTRIES, WHEREAS IN THE INDUSTRIAL SITUATION FOREMEN ARE GENERALLY EXCLUDED FROM THE BARGAINING UNIT; SEE E.G. FEDERAL PACKAGING AND PARTITION COMPANY LIMITED (1971) OLRB REP. 448 AT P. 450.

6. WE HAVE LONG RECOGNIZED THAT IN THE EARLY STAGES OF INDUSTRIAL ORGANIZATION THE FOREMAN WAS A KEY PERSON IN THE MANAGEMENT HIERARCHY. PERSONS LOOKING FOR A JOB CAME TO THE FOREMAN, WHO HAD THE RIGHT TO HIRE, TO FIRE, TO GRANT RAISES AND TO ASSIGN WORK. THE FOREMAN WAS EFFECTIVELY "THE KING OF THE SHOP" INsofar AS THE EMPLOYEES WERE CONCERNED. HE HAD A GREAT DEAL OF DISCRETION AND HE WAS ABLE TO MAKE DECISIONS WHICH GREATLY AFFECTED THE WELFARE OF THE EMPLOYEES. MOREOVER, HE EXERCISED CONSIDERABLE CONTROL OVER THEIR DAY TO DAY WORK LIFE. THE EVOLVING POSITION OF THE FOREMAN IN INDUSTRY IS MORE FULLY DESCRIBED IN THE SPRUCE FALLS POWER AND PAPER Co. LIMITED CASE 47 CLLC ¶16,489, AND IT IS NOT NECESSARY FOR US TO DESCRIBE THAT SITUATION ANY FURTHER.

7. HOWEVER, A VERY IMPORTANT AND SIGNIFICANT FACTOR IN ARRIVING AT DECISIONS ABOUT WHETHER FOREMEN WERE MANAGERIAL WAS THE CONFLICT OF INTEREST THEORY WHICH RECOGNIZED THAT FOREMEN OWED A DUTY TO MANAGEMENT TO CONTROL AND DISCIPLINE EMPLOYEES, AND IF THE FOREMAN WAS PLACED IN THE BARGAINING UNIT SO AS TO BECOME A UNION MEMBER, IT WOULD SERIOUSLY IMPAIR HIS MANAGEMENT FUNCTION. AS SUCH, THE DUTY TO BE OWED TO MANAGEMENT WOULD BE INCOMPATIBLE WITH THE TRADE UNION INTERESTS THAT HE HELD IN COMMON WITH HIS FELLOW EMPLOYEES; CF. FERRANTI-PACKARD ELECTRIC LIMITED (1968) SEPTEMBER OLRB MTHLY. REP. 572.

8. THE EVOLUTION OF INDUSTRIAL ORGANIZATION AND THE ADVENT OF COLLECTIVE BARGAINING ALTERED THE POSITION OF THE FOREMAN IN MANY SITUATIONS. HE IS NO LONGER THE "KING OF THE SHOP"; HIRING AND FIRING ARE DONE BY THE PERSONNEL DEPARTMENT; THE WORK MAY BE CONTROLLED BY THE TERMS OF A COLLECTIVE AGREEMENT OR WHERE THERE IS NO COLLECTIVE AGREEMENT THE WORK MAY BE CONTROLLED IN A SIMILAR FASHION. THE RESULT OF THE MANY CHANGES IN THE HIERARCHICAL STRUCTURE HAS DIMINISHED THE FOREMAN'S RESPONSIBILITY TO THE POINT WHERE HE MAY BE LEFT WITH THE VESTIGES OF POWER THAT HE ONCE EXERCISED AND WHERE HE PREVIOUSLY STOOD VISIBLY WITH MANAGEMENT HE NOW STANDS ON THE PERIPHERY BETWEEN BEING A MEMBER OF MANAGEMENT AND BEING

AN EMPLOYEE. IN A LIMITED FASHION HE MAY STILL CONTINUE TO EXERCISE MANAGERIAL FUNCTIONS AND IT IS THE USUAL RULE OF THUMB IN DESCRIBING BARGAINING UNITS TO PLACE A FOREMAN IN THE MANAGEMENT HIERARCHY.

9. DETERMINATIONS IN THE WHITE COLLAR AREA HAVE ALSO BECOME MORE DIFFICULT. WE HAVE INDICATED WE MUST BE CAUTIOUS IN USING THE INDUSTRIAL MODEL TO MAKE ASSESSMENTS ABOUT NON-INDUSTRIAL OR WHITE COLLAR SITUATIONS. HOWEVER, WE NOW HAVE GREATER EXPERIENCE WITH THE WHITE COLLAR SECTION AND WE ARE ABLE TO DRAW ON OUR SPECIFIC EXPERIENCE IN THAT AREA. IN THE NON-INDUSTRIAL AREA WE ARE NOW FINDING THAT THE DECISION-MAKING PROCESS AND CONTROL OF EMPLOYEES VARIES CONSIDERABLY. LIKE THE INDUSTRIAL SITUATION, PERSONNEL POLICIES ARE USUALLY DEVELOPED BY A PERSONNEL DEPARTMENT, BUT THE ELEMENTS OF MANAGEMENT ARE USUALLY DISPERSED THROUGHOUT THE ORGANIZATION. REAL CONTROL AND MANAGERIAL FUNCTIONS ARE EASILY ASCERTAINED AT THE TOP OF THE MANAGEMENT PYRAMID, BUT AT THE LOWER LEVELS MANAGERIAL FUNCTIONS ARE FILTERED THROUGH THE ORGANIZATION IN SUCH A WAY THAT THEY ARE NOT EASILY ASCERTAINABLE. MANY NON-INDUSTRIAL SITUATIONS HAVE DEVELOPED A COLLEGIAL DECISION-MAKING PROCESS WHICH REFLECT THAT TYPE OF ORGANIZATION. FOR EXAMPLE, TECHNICIANS OR DRAFTSMEN MAY WORK WITH AN ENGINEER IN A WHITE COLLAR SITUATION IN SUCH A MANNER THAT THEY PARTICIPATE IN THE DECISION-MAKING PROCESS. AGAIN, THE NATURE OF THEIR WORK IS SUCH THAT THEY MOVE FROM PROJECT TO PROJECT SO THAT IT IS DIFFICULT TO ASCERTAIN WHO CONTROLS THE EMPLOYEES; SEE E.G. THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO (1969) AUGUST OLRB MTHLY. REP. 669.

10. THIS TYPE OF SITUATION ALSO OCCURS IN HOSPITALS. AS INDICATED IN THIS CASE THERE MAY BE A TEAM APPROACH TO PATIENT CARE. NURSES WILL PARTICIPATE IN THE DECISION-MAKING PROCESSES WHICH ARE RELEVANT IN THE HOSPITAL'S OPERATIONS. NURSES ARE HIGHLY TRAINED, AND THE COMBINATION OF THEIR TRAINING AND EXPERIENCE PERMITS THEM A CONSULTATIVE ROLE WHICH DIFFERS FROM EMPLOYEES IN THE INDUSTRIAL CONTEXT; SEE AJAX AND PICKERING GENERAL HOSPITAL (1970) FEBRUARY OLRB MTHLY. REP. 1283. IT WOULD BE INCORRECT TO VIEW SUCH A ROLE AS MANAGERIAL AND THEREBY RENDER NURSES MANAGERIAL WITHIN THE MEANING OF THE LABOUR RELATIONS ACT.

11. HEAD NURSES STAND AT THE VERY BOUNDARY BETWEEN THE EMPLOYEE GROUP AND MANAGEMENT. THE HEAD NURSE IN THIS PARTICULAR CASE IS INDICATIVE OF THE ROLE USUALLY PLAYED BY HEAD NURSES. HEAD NURSES FORM A LINK OR A LIASION BETWEEN MANAGEMENT AND OTHER EMPLOYEES; THEY ARE IN CHARGE OF A HOSPITAL FLOOR AND THEREFORE ASSUME MANY DIFFERENT FUNCTIONS. FOR EXAMPLE, A HEAD NURSE IS STILL INVOLVED IN PATIENT CARE. BECAUSE OF HER EXPERIENCE SHE MAY BE CALLED UPON BY OTHER NURSES PRIOR TO CONSULTING THE DOCTOR. SHE MAY ALSO BE REQUIRED TO ASSIST IN THE ORIENTATION OF NURSES WHO ARE NEW TO THAT PARTICULAR FLOOR. NEITHER OF THESE ROLES IS A MANAGEMENT FUNCTION, BUT IS MERELY THE FUNCTION OF THE TRAINING AND EXPERIENCE OF HEAD NURSES. IN ADDITION, THE HEAD NURSE CARRIES OUT LIMITED ADMINISTRATIVE DUTIES. FOR EXAMPLE, SHE CO-ORDINATES THE POLICIES OF THE HOSPITAL ON HER FLOOR WITH RESPECT TO STAFFING. SHE SEES THAT THE SCHEDULING AND ARRANGING OF PERSONNEL IS SUCH THAT THERE IS ADEQUATE COVERAGE FOR PATIENTS. THIS SCHEDULING IS CARRIED OUT IN CORRES-

PONDENCE WITH A PREDETERMINED POLICY AND THE HEAD NURSE IS MERELY IMPLEMENTING POLICIES DECIDED AT A HIGHER LEVEL. THIS IMPLEMENTATION SHOULD NOT BE CONFUSED WITH THE DECISION-MAKING OR CONTROL FUNCTION THAT GOES HAND IN HAND WITH MANAGEMENT.

12. ALSO, THE HEAD NURSE FORMS A CONDUIT BETWEEN THE GENERAL STAFF ON HER FLOOR AND MANAGEMENT, OR TO PUT IT ANOTHER WAY SHE HAS A REPORTING FUNCTION. IN THIS FUNCTION SHE IS A LIASION BETWEEN MANAGEMENT AND OTHER EMPLOYEES; SHE ENABLES MANAGEMENT TO "KEEP ITS EAR TO THE GROUND" AND IN TOUCH WITH THE DAILY OPERATIONS AND FUNCTIONS OF THE HOSPITAL, AND AT THE SAME TIME SHE IS A PART OF THE VEHICLE FOR MANAGEMENT TO CONVEY POLICIES AND DECISIONS TO OTHER EMPLOYEES. AGAIN, THIS REPORTING FUNCTION SHOULD NOT BE CONFUSED WITH THE EXERCISE OF MANAGERIAL DUTIES. THE DUTY TO MANAGE AND THE CONCEPT OF A MANAGERIAL FUNCTION REQUIRES A CORRESPONDING AND CORRELATIVE RESPONSIBILITY. THE HEAD NURSE IN THIS CASE DOES NOT HAVE THAT TYPE OF RESPONSIBILITY THAT ONE ENVISIONS AS BEING MANAGERIAL. SHE IS NOT AKIN TO THE EARLY FOREMAN THAT WE HAVE SPOKEN ABOUT, NOR DOES SHE HAVE DUTIES THAT ARE INCOMPATIBLE WITH PLACING HER IN THE BARGAINING UNIT. THERE IS NO CONFLICT BETWEEN THE DUTY THEY SHE OWES TO MANAGEMENT AND HER BEING A MEMBER OF THE BARGAINING UNIT. AGAIN, IN THIS CASE, AS IN THE AJAX AND PICKERING GENERAL HOSPITAL CASE, SUPRA, HER VERY LIMITED ROLE INDICATES THAT SHE IS NOT A MEMBER OF MANAGEMENT. FOR EXAMPLE, IF AN EMPLOYEE WANTS TIME OFF IN EXCESS OF ONE HOUR THE HEAD NURSE MUST CONSULT HER SUPERVISOR. SURELY, IF SHE WERE MANAGEMENT SHE WOULD HAVE A GREATER HAND IN AWARDED TIME OFF. THE TYPE OF LIMITED RESPONSIBILITY PERMEATES OTHER AREAS AS WELL AND IN OUR VIEW HER LACK OF RESPONSIBILITY INDICATES THAT SHE IS NOT PART OF THE MANAGEMENT TEAM.

13. IN SUM, AFTER REVIEWING THE REPORT OF THE EXAMINER, WE ARE OF THE OPINION THAT THE HEAD NURSES DO NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF THE LABOUR RELATIONS ACT AND THEY ARE THEREFORE INCLUDED IN THE BARGAINING UNIT.

14. FURTHER, HAVING REGARD TO THE REPORT OF THE EXAMINER, DATED AUGUST 28, 1972, THE BOARD FINDS THAT THE OCCUPATIONAL HEALTH NURSE DOES NOT EXERCISE MANAGERIAL FUNCTIONS AND IS THEREFORE INCLUDED IN THE BARGAINING UNIT.

15. THE BOARD FURTHER FINDS THAT ALL REGISTERED AND GRADUATE NURSES EMPLOYED BY THE RESPONDENT ENGAGED IN NURSING AND TEACHING AT PETERBOROUGH, SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

16. FOR THE PURPOSE OF CLARITY THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT MRS. D. STEWART, SOCIAL SERVICE WORKER IS NOT INCLUDED IN THE BARGAINING UNIT.



17. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN SIXTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON MAY 18, 1972, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

18. A CERTIFICATE WILL ISSUE TO THE APPLICANT WITH RESPECT TO THE BARGAINING UNIT DESCRIBED IN PARAGRAPH 15.

19. THE BOARD FURTHER FINDS THAT ALL REGISTERED AND GRADUATE NURSES EMPLOYED BY THE RESPONDENT ENGAGED IN NURSING AND TEACHING AT PETERBOROUGH REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK, SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

20. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN THIRTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON MAY 18, 1972, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

21. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT DESCRIBED IN PARAGRAPH 19. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

22. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BE REPRESENTED BY THE APPLICANT IN THEIR EMPLOYMENT RELATIONS WITH THE RESPONDENT.

23. THE MATTER IS REFERRED TO THE REGISTRAR.

DECISION OF BOARD MEMBER J.D. BELL: MARCH 13, 1973.

1. MANY OF THE DUTIES PERFORMED BY THE HEAD NURSE AT THIS HOSPITAL ARE MANAGERIAL FUNCTIONS WHICH SHOULD EXCLUDE HER FROM THE BARGAINING UNIT.

2. I AGREE THAT SHE STANDS AT THE VERY BOUNDARY BETWEEN THE EMPLOYEES AND MANAGEMENT. HOWEVER, I BELIEVE SHE STANDS ON THE MANAGEMENT SIDE OF THE BOUNDARY.

3. SHE IS IN CHARGE OF A FLOOR OF THIS HOSPITAL. SHE ASSUMES MANY DIFFERENT RESPONSIBILITIES, I.E., ADMINISTRATIVE DUTIES, CO-ORDINATION OF POLICIES, SCHEDULING, DIRECTING THE WORK FORCE, ETC. SHE IS THE FIRST LINE OF AUTHORITY TO THOSE WORKING UNDER HER.

4. THERE IS BOUND TO BE CONFLICTS BETWEEN THE DUTIES SHE OWES TO MANAGEMENT AND HER FUNCTIONS WITH OTHER EMPLOYEES WHICH COULD RENDER HER POSITION IN THE BARGAINING UNIT ENTENABLE OR HER FUNCTION AS MANAGEMENT INEFFECTIVE.

5. I WOULD FIND THAT THE DUTIES AND RESPONSIBILITIES OF THE HEAD NURSE IN THIS HOSPITAL ARE SUCH THAT SHE SHOULD BE EXCLUDED FROM THE BARGAINING UNIT IN ACCORDANCE WITH SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT.

3330-72-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. SWINGLINE OF CANADA LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS O. HODGES AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: PETER G. KENNEDY AND PAT GRASSO FOR THE APPLICANT; DONALD J. M. BROWN AND JAMES BEAMISH FOR THE RESPONDENT; NICOLINA CIAMARRA AND MARY WALSH FOR THE OBJECTORS.

DECISION OF THE BOARD: MARCH 14, 1973.

1. THE NAME "SWINGLINE OF CANADA LIMITED" APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "SWINGLINE OF CANADA LTD."

2. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.

3. THE BOARD FURTHER FINDS THAT ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, ONE SECRETARY EACH TO THE GENERAL MANAGER AND THE COMPTROLLER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. FOR PURPOSES OF CLARITY THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT PERSONS IN THE CLASSIFICATION OF COMPUTER OPERATOR ARE INCLUDED IN THE BARGAINING UNIT.

5. THE RESPONDENT FILED A LIST OF 19 EMPLOYEES ALL OF WHOM ARE INCLUDED IN THE BARGAINING UNIT FOR PURPOSES OF THE COUNT. THE APPLICANT FILED EVIDENCE OF MEMBERSHIP FOR 15 PERSONS WHOSE NAMES CORRESPOND TO THOSE APPEARING ON THE RESPONDENT'S LIST. THE APPLICANT REQUIRES EVIDENCE OF MEMBERSHIP FOR 13 EMPLOYEES IN THE BARGAINING UNIT IN ORDER TO HAVE THE 65 PER CENT REQUIRED FOR OUTRIGHT CERTIFICATION. THERE WAS FILED WITH THE BOARD A HANDWRITTEN STATEMENT OF DESIRE EXPRESSING OPPOSITION TO THE APPLICATION BEARING THE SIGNATURES OF FIVE PERSONS CLAIMED IN MEMBERSHIP BY THE APPLI-

CANT UNION. IF THE BOARD WERE TO GIVE WEIGHT TO THIS DOCUMENT, THE APPLICANT WOULD HAVE UNQUALIFIED EVIDENCE OF MEMBERSHIP FOR LESS THAN THE 65 PER CENT REQUIRED FOR OUTRIGHT CERTIFICATION. THERE WERE AS WELL FILED WITH THE BOARD STATEMENTS OF REVOCATION SIGNED BY THREE PERSONS CLAIMED IN MEMBERSHIP BY THE APPLICANT WHO ALSO SIGNED THE STATEMENT OF DESIRE IN OPPOSITION TO THE APPLICATION. IN THEIR STATEMENTS OF REVOCATION THE THREE PERSONS CONCERNED REVOKED THEIR SUPPORT OF THE STATEMENT OF DESIRE. BASED ON THE EVIDENCE ADDUCED AT THE HEARING WITH REGARD TO THE PREPARATION OF THE SAID STATEMENTS OF REVOCATION, THE BOARD IS SATISFIED THAT THEY REPRESENT A VOLUNTARY EXPRESSION OF THE TRUE WISHES OF THE PERSONS WHO SIGNED THEM. THERE THEREFORE REMAIN ONLY THE SIGNATURES OF TWO PERSONS ON THE STATEMENT OF DESIRE IN OPPOSITION TO THE APPLICATION WHO ARE CLAIMED IN MEMBERSHIP BY THE APPLICANT UNION. EVEN IF THE BOARD WERE TO GIVE WEIGHT TO THE TWO SIGNATURES ON THE STATEMENT OF DESIRE, THE APPLICANT WOULD STILL HAVE UNQUALIFIED EVIDENCE OF MEMBERSHIP FOR THE 65 PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT REQUIRED FOR OUTRIGHT CERTIFICATION. ACCORDINGLY, NO PURPOSE WOULD BE SERVED IN MAKING ANY INQUIRY WITH REGARD TO THE ORIGINATION AND CIRCULATION OF THE STATEMENT OF DESIRE.

6. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN SIXTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON MARCH 2, 1973, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

7. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

3094-72-R: JUDITH MCGOLDRICK AND KATHLEEN DAoust (APPLICANTS) V. THE CANADIAN UNION OF PUBLIC EMPLOYEES AND ITS LOCAL 1423 (RESPONDENT).

RE: COCHRANE NURSING HOMES LIMITED

BEFORE: D.E. FRANKS, VICE-CHAIRMAN, AND BOARD MEMBERS J.D. BELL AND A. MAIN.

DECISION OF THE BOARD: MARCH 22, 1973.

1. BY A DECISION OF THE BOARD DATED FEBRUARY 6, 1973, MR. S.G. GRIZZLE, EXAMINER, WAS AUTHORIZED TO INQUIRE INTO AND REPORT TO THE BOARD ON THE DUTIES AND RESPONSIBILITIES OF JUDITH MCGOLDRICK, ONE OF THE APPLICANTS IN THIS MATTER. THE SOLICITOR FOR THE APPLICANTS HAS BY LETTER DATED MARCH 1, 1973, SUGGESTED THAT THE SCOPE OF THE INQUIRY BY THE EXAMINER SHOULD BE LIMITED TO CHANGES OR ALTERATIONS IN THE DUTIES AND RESPONSIBILITIES OF MRS. MCGOLDRICK SUBSEQUENT TO APRIL 19, 1972.

2. THE BASIS OF THIS REQUEST IS A PREVIOUS DECISION OF THE BOARD



IN BOARD FILE NO. 18024-70-R, WHERE A PANEL OF THIS BOARD DEALT WITH THE EMPLOYMENT STATUS OF JUDITH MCGOLDRICK. BY A DECISION OF THE PANEL SEIZED WITH THAT CASE DATED JUNE 19, 1972, MRS. MCGOLDRICK AND THREE OTHER PERSONS CLASSIFIED BY COCHRANE NURSING HOME LIMITED AS "SUPERVISORY CHARGE NURSES" WERE NOT EXCLUDED FROM THE ACT BY OPERATION OF SECTION 1(3)(B) OF THE ACT. THAT DECISION WAS THE RESULT OF AN EXAMINER'S INQUIRY INTO THE DUTIES AND RESPONSIBILITIES OF THE FOUR EMPLOYEES INVOLVED. APRIL 19, 1972 WAS THE DATE OF THE LAST MEETING OF THE PARTIES WITH THE EXAMINER IN THAT MATTER. THE CONTENTION OF COUNSEL FOR THE APPLICANT IS THUS THAT IT IS ONLY THE CHANGES IN THE DUTIES AND RESPONSIBILITIES OF MRS. MCGOLDRICK THAT HAVE OCCURRED SINCE THAT LAST MEETING OF THE EXAMINER THAT SHOULD BE INQUIRED INTO IN THE PRESENT CASE.

3. THE RESPONDENT TRADE UNION ON THE OTHER HAND CONTENDS THAT THE EXAMINER'S INQUIRY SHOULD NOT BE RESTRICTED IN ANY SENSE, BUT THAT THE BOARD SHOULD BE INFORMED OF MRS. MCGOLDRICK'S DUTIES AS A WHOLE.

4. THIS BOARD CANNOT IN THE COURSE OF THE PRESENT CASE SIT IN APPEAL OR ON REVIEW OF THE PREVIOUS DECISION OF ANOTHER PANEL OF THE BOARD WITH RESPECT TO THE DUTIES AND RESPONSIBILITIES OF MRS. MCGOLDRICK. THE BOARD'S CONCERN IN THIS PRESENT CASE IS WITH CHANGES IN THE DUTIES AND RESPONSIBILITIES OF MRS. MCGOLDRICK SINCE THE PREVIOUS DETERMINATION BY THE BOARD IN BOARD FILE NO. 18024-70-R. HOWEVER, THE BOARD CANNOT MAKE A DECISION ON WHETHER MRS. MCGOLDRICK IS AN EMPLOYEE FOR THE PURPOSES OF THE ACT WITHOUT CONSIDERING ANY CHANGES IN HER DUTIES AND RESPONSIBILITIES IN THEIR PROPER CONTEXT.

5. THE EXAMINER IS THEREFORE INSTRUCTED TO CONTINUE WITH HIS INQUIRY AS SET OUT IN THE BOARD'S DECISION OF FEBRUARY 6, 1973.

2934-72-R: FEDERATION OF CHILDREN'S AID STAFFS (APPLICANT) V. THE CHILDREN'S AID SOCIETY OF SAULT STE. MARIE AND THE DISTRICT OF ALGOMA (RESPONDENT).

BEFORE: O.B. SHIMES, VICE-CHAIRMAN, AND BOARD MEMBERS D.B. ARCHER AND J.E.C. ROBINSON, Q.C.

DECISION OF THE BOARD: MARCH 13, 1973.

1. THIS IS A REQUEST FOR RECONSIDERATION BY THE APPLICANT CONCERNING PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK. THE APPLICANT IN EFFECT IS REQUESTING THE BOARD TO ISSUE A CERTIFICATE FOR AND ON BEHALF OF THESE PERSONS WHO MAY FOR CONVENIENCE BE REFERRED TO AS THE PART-TIME EMPLOYEES.

2. AT THE INITIAL HEARING IN THIS MATTER THE RESPONDENT ADVISED THE BOARD THAT IT WISHED TO EXCLUDE THE PART-TIME EMPLOYEES FROM THE FULL-TIME BARGAINING UNIT, AND ON BEING ADVISED THAT THE RESPONDENT DID IN FACT HAVE A HISTORY OF EMPLOYING SUCH PERSONS THE BOARD IN ITS CERTI-

FIFICATE EXCLUDED THESE PART-TIME EMPLOYEES FROM THE FULL-TIME BARGAINING UNIT.

3. IT HAS BEEN THE BOARD'S CONSISTENT PRACTICE THAT WHERE THERE IS A REQUEST FOR EXCLUSION OF PART-TIME EMPLOYEES AND AN APPLICANT TRADE UNION HAS MEMBERSHIP AMONG THE PART-TIME EMPLOYEES, TO CONSIDER THE PART-TIME BARGAINING UNIT AS A SEPARATE BARGAINING UNIT AND TO ASSESS THE MEMBERSHIP POSITION OF THE APPLICANT TRADE UNION WITH RESPECT TO THE PART-TIME BARGAINING UNIT. THE BOARD MAY THEN GRANT A SEPARATE CERTIFICATE FOR THE PART-TIME EMPLOYEES PURSUANT TO SECTION 7 OF THE ACT PROVIDED THE APPLICANT TRADE UNION HAS THE REQUISITE MEMBERSHIP, OR IT MAY ORDER A VOTE, OR IT MAY DISMISS THE APPLICATION INsofar AS IT AFFECTS THE PART-TIME EMPLOYEES.

4. IN THIS CASE THE APPLICANT HAS THE REQUISITE MEMBERSHIP IN THE PART-TIME BARGAINING UNIT TO ENTITLE IT TO A CERTIFICATION WITH RESPECT TO THE PART-TIME BARGAINING UNIT. ACCORDINGLY, HAVING REGARD TO THE AGREEMENT OF THE PARTIES THE BOARD FINDS THAT THE SOCIAL WORKERS, SOCIAL WORK ASSISTANTS AND CASE-AIDES REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK BY THE RESPONDENT, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

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6. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

2361-72-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. CAYUGA MATERIALS & CONSTRUCTION CO. LIMITED (RESPONDENT) V. TEAMSTERS LOCAL UNION 879 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (INTERVENER #1) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (INTERVENER #2).

BEFORE: D.E. FRANKS, VICE-CHAIRMAN, AND BOARD MEMBERS H.J.F. ADE AND E. BOYER.

APPEARANCES AT THE HEARING: T.J. DUNNE AND E. VANDERKLOET FOR THE APPLICANT; D.L. BRISBIN FOR THE RESPONDENT; L.A. MACLEAN AND DON SWAIT FOR INTERVENER #1; A.M. MINSKY AND GLEN MCLEOD FOR INTERVENER #2.

DECISION OF THE BOARD:

MARCH 16, 1973.

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2. IN THIS APPLICATION THE APPLICANT, THE CHRISTIAN LABOUR ASSOCIATION OF CANADA, (HEREINAFTER REFERRED TO AS THE "CLAC"), IS SEEKING CERTIFICATION FOR A BARGAINING UNIT OF EMPLOYEES OF THE RESPONDENT COMPANY. INTERVENER #1, TEAMSTERS LOCAL UNION 879 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA,

(HEREINAFTER REFERRED TO AS THE "TEAMSTERS"), HAD APPLIED FOR CERTIFICATION IN A PREVIOUS FILE (BOARD FILE NO. 2305-72-R), AND ON THE BASIS OF EVIDENCE OF MEMBERSHIP FILED IN THAT APPLICATION INTERVENES IN THE PRESENT CASE. HOWEVER, THEIR PRESENT INTERVENTION IS NOT AN APPLICATION FOR CERTIFICATION BY WAY OF INTERVENTION. INTERVENER #2, THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793, (HEREINAFTER REFERRED TO AS THE "OPERATING ENGINEERS"), INTERVENED IN THIS APPLICATION IN RELATION TO THE EMPLOYEES AFFECTED BY TWO OTHER APPLICATIONS FOR CERTIFICATION BY THE OPERATING ENGINEERS MADE PURSUANT TO THE CONSTRUCTION INDUSTRY PROVISIONS OF THE LABOUR RELATIONS ACT (BOARD FILE NO. 2342-72-R AND BOARD FILE NO. 2366-72-R). THE EMPLOYEES AFFECTED BY THESE TWO APPLICATIONS BY THE OPERATING ENGINEERS ARE AFFECTED BY THE INSTANT APPLICATION IN THAT THEY ARE INCLUDED IN THE BARGAINING UNIT CLAIMED BY THE APPLICANT TO BE APPROPRIATE FOR COLLECTIVE BARGAINING IN THIS CASE.

3. AS A RESULT OF CERTAIN ALLEGATIONS BY BOTH OF THE INTERVENERS, IN THIS CASE, THE BOARD CONDUCTED ITS USUAL PRELIMINARY INQUIRIES AS TO WHETHER CERTAIN EMPLOYEES ON THE LIST OF EMPLOYEES FILED BY THE RESPONDENT IN THIS CASE, HAD, IN FACT, PAID THE \$1.00 INITIATION FEE IN ORDER TO ESTABLISH MEMBERSHIP IN THE APPLICANT FOR THE PURPOSES OF THE ACT. AS A RESULT OF THESE PRELIMINARY INQUIRIES AN INVESTIGATION WAS CONDUCTED BY THE BOARD WHICH RANGED OVER FIVE DAYS OF HEARINGS. IN THE COURSE OF THESE HEARINGS THE BOARD CALLED TEN PERSONS TO GIVE EVIDENCE IN RELATION TO VARIOUS TRANSACTIONS THAT HAD TAKEN PLACE WITH RESPECT TO THE EVIDENCE OF MEMBERSHIP FILED BY THE CLAC IN THIS MATTER. NEITHER THE RESPONDENT NOR THE TWO INTERVENERS CALLED ANY EVIDENCE. HOWEVER, THE APPLICANT CALLED EVIDENCE FROM THREE PERSONS WHO ARE PAID ORGANIZERS AND OFFICERS OF THE APPLICANT.

4. THE EVIDENCE BEFORE THE BOARD ARISES OUT OF THREE DIFFERENT OCCASIONS IN WHICH ATTEMPTS WERE MADE TO SOLICIT MEMBERS FOR THE CLAC. WE SHALL FIRST DEAL WITH THE EVIDENCE AS IT RELATES TO THESE THREE INCIDENTS AND THEN DEAL WITH OTHER MATTERS THAT DEVELOPED AFTER THESE INCIDENTS.

5. THE FIRST INCIDENT WE SHALL DEAL WITH INVOLVES HAROLD HARRIS AS A COLLECTOR OF THE \$1.00 PAYMENT AND TWO EMPLOYEES OF THE RESPONDENT, WILLIAM HAWK AND ROSS WILCOX. THESE EVENTS TRANSPIRED AS ONE INCIDENT IN WHICH HARRIS, A WORKING FOREMAN, VISITED A JOB SITE KNOWN BY THE EMPLOYEES AS THE CASTOR CENTRE PROJECT. THE EVENTS IN QUESTION OCCURRED IN A RELATIVELY SHORT INTERVAL OF TIME AND CAN BE DEALT WITH AS ONE INCIDENT. THE EVIDENCE OF WILLIAM HAWK WAS THAT HARRIS APPROACHED A NUMBER OF EMPLOYEES ASKING THEM TO SIGN CARDS TO BECOME MEMBERS OF THE APPLICANT TRADE UNION. HAWK CLAIMS THAT NO MONEY WAS PAID TO HARRIS AT THIS POINT AND FURTHER THAT HARRIS DID NOT ASK FOR A \$1.00 PAYMENT. HAWK HAD A CLEAR UNDERSTANDING OF THE TRANSACTION THAT "IF ANYONE WAS GOING TO PAY IT WAS NOT GOING TO BE HIM". THE EVIDENCE OF WILCOX IS THAT A LOAN WAS MADE BY HARRIS TO ENABLE HIM TO PAY THE \$1.00 TO SOME OTHER PERSON HE DID NOT KNOW WHO WAS AN ORGANIZER FOR THE APPLICANT. HARRIS' VERSION OF THESE TWO TRANSACTIONS IS THAT IN BOTH CASES HE WAS



ASKED BY THE EMPLOYEES FOR A LOAN AND GAVE THEM THE LOAN OF \$1.00, IN ORDER TO FACILITATE THEIR JOINING THE TRADE UNION. THE MONEY BORROWED BY THE TWO EMPLOYEES WAS THEN GIVEN TO HARRIS AS A CANVASSER AND COLLECTOR OF MEMBERSHIP FEES, AND ON BOTH CARDS HARRIS APPEARS AS THE COLLECTOR OF THE \$1.00 PAYMENT TOWARDS INITIATION FEES.

6. TAKEN TOGETHER THE EVIDENCE OF WILCOX AND HARRIS RATHER THAN HAVING A CORROBORATIVE EFFECT REDUCES THE CREDIBILITY OF BOTH WITNESSES. THEIR EVIDENCE CONFLICTS SUBSTANTIALLY AS TO THE BASIC NATURE OF THE TRANSACTION DESCRIBED. WILCOX SAYS HE PAID THE MONEY TO AN UNIDENTIFIED ORGANIZER FOR THE APPLICANT, BUT THAT ORGANIZER ACCORDING TO HARRIS' TESTIMONY WAS HARRIS HIMSELF. THIS CONFLICT TAKEN TOGETHER WITH THE GENERAL Demeanour OF THESE WITNESSES IN THE GIVING OF THEIR EVIDENCE, WHICH CAN ONLY BE DESCRIBED AS SOMEWHAT LESS THAN FORTHRIGHT, LEADS ONE TO THE VIEW THAT THEY HAVE NOT DESCRIBED THE TRANSACTION THAT TOOK PLACE WHEN WILCOX SIGNED THE MEMBERSHIP CARD.

7. ON THE OTHER HAND HAWK GAVE HIS EVIDENCE IN A STRAIGHTFORWARD MANNER AND WE ACCEPT HIS EVIDENCE AS TO THE NATURE OF THE TRANSACTION THAT TOOK PLACE BETWEEN HIMSELF AND HARRIS. FURTHER, SINCE THERE IS EVIDENCE THAT THESE TRANSACTIONS TOOK PLACE AT ABOUT THE SAME TIME WE TAKE THE VIEW THAT THE TRANSACTION BETWEEN WILCOX AND HARRIS WAS A SIMILAR TRANSACTION, AND THAT IN BOTH CASES HARRIS NEITHER ASKED FOR NOR RECEIVED PAYMENT OF \$1.00.

8. THE NEXT INCIDENT WE SHALL DEAL WITH INVOLVES TWO EMPLOYEES, ALVIO DUARTE AND TONY BORGES. THIS INCIDENT OCCURRED AT A JOB SITE APPARENTLY ON HIGHWAY 24. THE WITNESS, BORGES, WAS APPROACHED BY AN EMPLOYEE OF THE RESPONDENT, HARLEY PHIBBS. PHIBBS ARRIVED AT THE PLACE WHERE BORGES WAS WORKING IN A TRUCK BELONGING TO THE RESPONDENT AND WAS KNOWN TO BORGES AS A "BOSS". PHIBBS TOLD BORGES TO SIGN THE CARD WHICH BORGES DID. NO MONEY WAS ASKED FOR BY PHIBBS NOR WAS ANY MONEY PAID BY BORGES. PHIBBS THEN ASKED BORGES TO GET INTO THE TRUCK AND THEY DROVE DOWN THE ROAD ABOUT A QUARTER OF A MILE TO WHERE DUARTE WAS WORKING. PHIBBS ASKED BORGES TO TRANSLATE TO DUARTE FROM ENGLISH TO PORTUGUESE. DUARTE WAS TOLD TO SIGN THE CARD; AGAIN, NO MONEY WAS ASKED FOR BY PHIBBS NOR WAS ANY MONEY PAID BY DUARTE. THE Demeanour OF BOTH DUARTE AND BORGES AS WITNESSES WAS SUCH THAT WE HAVE NO DOUBT THAT THIS ACCURATELY REFLECTS THE EVENTS WHICH OCCURRED BETWEEN PHIBBS AND THE TWO WITNESSES.

9. IT IS CLEAR THAT HARLEY PHIBBS WAS THE CANVASSER IN RESPECT OF THE EVIDENCE OF MEMBERSHIP SUBMITTED ON BEHALF OF BOTH BORGES AND DUARTE, AND FURTHER, IT IS CLEAR THAT NO MONEY WAS PAID BY EITHER BORGES NOR DUARTE IN RESPECT OF THAT EVIDENCE OF MEMBERSHIP. THERE IS, HOWEVER, A FURTHER PROBLEM IN THAT, ON NEITHER THE BORGES' CARD NOR THE DUARTE' CARD DOES THE NAME HARLEY PHIBBS APPEAR AS THE NAME OF THE COLLECTOR OF THE \$1.00 FEE. ON ONE CARD THE NAME OF GEORGE SMITH APPEARS AS COLLECTOR AND ON THE OTHER CARD THE NAME OF VICTOR POWELL APPEARS AS COLLECTOR. FURTHER, NO EVIDENCE OF MEMBERSHIP WAS PRESENTED TO THE BOARD BY THE APPLICANT IN WHICH HARLEY PHIBBS APPEARED AS COLLECTOR. THAT IS, NOT

ONLY IS THERE CLEAR EVIDENCE BEFORE THE BOARD OF A "NON-PAY" WITH RESPECT TO THESE TWO CARDS, BUT THERE IS ALSO CLEAR EVIDENCE THAT THE ACTUAL CANVASSER WHO OBTAINED THE CARDS IS NOT INDICATED ANYWHERE ON THE CARDS. WITH RESPECT TO THE PERSONS WHOSE NAMES APPEAR ON THESE CARDS AS COLLECTORS, POWELL AND SMITH, THIS WILL BE DEALT WITH LATER IN THIS DECISION, BECAUSE FURTHER EVIDENCE WITH RESPECT TO THESE TWO PERSONS AROSE AT THE HEARING.

10. THE THIRD INCIDENT WE SHALL DEAL WITH INVOLVES MR. WALTER WINGROVE. THERE IS CLEAR EVIDENCE THAT THE CARD SUBMITTED ON BEHALF OF WALTER WINGROVE WAS SIGNED BY MR. WINGROVE AT HIS HOME. HE WAS APPROACHED AT HIS HOME BY MR. EUGENE MONTAGUE, THE GENERAL SUPERINTENDENT OF THE RESPONDENT. THE MATTER OF UNION ORGANIZATION WAS DISCUSSED BY MR. MONTAGUE AND MR. WINGROVE, AND MR. WINGROVE SIGNED THE APPLICATION FOR MEMBERSHIP IN THE APPLICANT. IN THIS INSTANCE, HOWEVER, NO MONEY WAS REQUESTED NOR WAS ANY MONEY PAID BY WINGROVE IN RESPECT OF AN INITIATION FEE. IN DEALING WITH THE EVIDENCE OF MR. MONTAGUE, BEYOND THESE VERY FEW FACTS, THE EVIDENCE OF MONTAGUE CAN BE GIVEN LITTLE WEIGHT. IN PARTICULAR, MR. MONTAGUE SUGGESTED THAT THE CARD HE WAS SHOWN WAS NOT THE CARD REFERRED TO IN THE TRANSACTION WITH WINGROVE BECAUSE THAT ONE HAD ONLY BEEN SIGNED IN ONE PLACE BY WINGROVE, WHEREAS THE ONE HE WAS SHOWN AT THE HEARING WAS SIGNED IN TWO PLACES BY WINGROVE. ON THE OTHER HAND, MONTAGUE COULD NOT REMEMBER WHERE HE GOT THE CARD OR WHO HE GAVE IT TO AFTER SEEING WINGROVE. MR. MONTAGUE SUFFERED WHAT APPEARED TO BE CONVENIENT LAPSES OF MEMORY IN THE GIVING OF HIS EVIDENCE, AND WE ARE OF THE OPINION THAT NO WEIGHT CAN BE GIVEN TO HIS EXPLANATION THAT THE CARD PRESENTED TO THE BOARD MUST BE SOME OTHER CARD. THUS, IN RESPECT OF THE CARD SUBMITTED ON BEHALF OF WALTER WINGROVE WE FIND THAT NO PAYMENT OF \$1.00 WAS MADE IN RESPECT OF INITIATION FEES IN THE CLAC.

11. WE TURN NOW TO THE CONDUCT OF GEORGE SMITH IN THIS ORGANIZING CAMPAIGN. MR. SMITH IS A TRUCK DRIVER FOR THE RESPONDENT AND WAS CALLED TO GIVE EVIDENCE ONCE WITH RESPECT TO THE WINGROVE CARD AND ON ANOTHER OCCASION WITH RESPECT TO THE BORGES CARD. AS A WITNESS MR. SMITH ON OCCASION APPEARED BELLIGERENT AND CERTAINLY BECAME VERY CAUTIOUS AT CERTAIN POINTS IN THE GIVING OF HIS EVIDENCE. ON THE OTHER HAND, WITH RESPECT TO THOSE OCCASIONS IN WHICH HE GAVE A CLEAR ANSWER WE BELIEVE MR. SMITH WAS INDEED BEING TRUTHFUL ABOUT HIS RECOLLECTION OF THE EVENTS HE WAS DESCRIBING. IT IS CLEAR, FOR INSTANCE, THAT SMITH DID NOT DISCUSS MEMBERSHIP IN THE APPLICANT WITH EITHER WINGROVE OR BORGES. FURTHER, SMITH DESCRIBED AN INCIDENT IN WHICH HE RECEIVED A NUMBER OF MEMBERSHIP CARDS AT THE WEIGH SCALES OF THE C.F. ANDERSON OPERATION IN SIMCOE. THESE CARDS WERE IN AN ENVELOPE ADDRESSED TO SMITH AND THERE WAS APPARENTLY \$1.00 FOR EACH CARD IN THE ENVELOPE. SMITH DOES NOT KNOW WHO GAVE HIM THE ENVELOPE, AND HE HAS NO IDEA AS TO WHERE THE CONTENTS OF THE ENVELOPE CAME FROM OTHER THAN THAT THIS ENVELOPE WAS WAITING FOR HIM AT THE WEIGH SCALES. SMITH FURTHER TESTIFIED THAT UPON RECEIPT OF THE ENVELOPE HE EXAMINED ITS CONTENTS. THE CONTENTS WERE A NUMBER OF CARDS TOGETHER WITH AN AMOUNT OF MONEY EQUIVALENT TO THE REQUIRED \$1.00 FOR EACH CARD. SMITH COULD NOT, HOWEVER, REMEMBER HOW MANY CARDS WERE IN THE ENVELOPE,

ALTHOUGH HE VAGUELY SUGGESTED THERE WERE ABOUT TEN CARDS IN THE ENVELOPE. HE DOES, HOWEVER, REMEMBER THAT THERE WERE SOME INSTANCES WHERE THE CARDS WERE NOT COMPLETELY FILLED IN. SMITH TESTIFIED THAT HE COMPLETED A NUMBER OF THESE CARDS AND IN PARTICULAR THAT HE SIGNED SOME CARDS IN THE ENVELOPE, AS THE COLLECTOR OF THE \$1.00 PAYMENT WHEN, OF COURSE, HE HAD NOT BEEN THE COLLECTOR. IN THIS MANNER SMITH EXPLAINED THE APPEARANCE OF HIS SIGNATURE ON BOTH THE WINGROVE CARD WHICH WAS REALLY OBTAINED BY MONTAGUE AND THE BORGES CARD OBTAINED BY PHIBBS. ON THE OTHER HAND SMITH HAD NO KNOWLEDGE OF WHO GAVE HIM THE CARDS, NOR COULD HE EXPLAIN HOW HE KNEW THERE WOULD BE AN ENVELOPE WITH CARDS WAITING FOR HIM AT THE WEIGH SCALES.

12. SMITH TESTIFIED THAT AFTER HE HAD RECEIVED THE CARDS HE TURNED THEM OVER TO A REPRESENTATIVE OF THE CLAC, ALTHOUGH HE WAS NOT SURE WHETHER THIS WAS STAN DEJUNG OR JOHN VANDERLAN. FURTHER, SMITH WAS QUITE ADAMANT IN HIS RECOLLECTION THAT HE INFORMED THE CLAC REPRESENTATIVE HOW HE HAD OBTAINED THE CARDS, THAT IS, THAT HE HAD OBTAINED THEM AT THE WEIGH SCALE IN SIMCOE.

13. WE RETURN NOW TO THE CARD FOR DUARTE, WHICH WAS ACCORDING TO THE WITNESS DUARTE, COLLECTED BY HARLEY PHIBBS. THE PERSON SHOWN ON THAT CARD AS COLLECTOR IS A PERSON NAMED VIC POWELL. MR. POWELL TESTIFIED THAT HE IS A WELDER EMPLOYED BY CAYUGA MATERIALS & CONSTRUCTION. WHEN SHOWN THE CARD FOR MR. DUARTE BEARING HIS NAME AS COLLECTOR, POWELL TESTIFIED THAT THIS WAS NOT HIS SIGNATURE. MR. POWELL WAS THEN SHOWN ALL THE CARDS BEARING HIS NAME AS COLLECTOR; FROM THESE CARDS HE SEPARATED SIX WHICH HE INDICATED DO NOT BEAR HIS SIGNATURE.

14. THE ABOVE EVIDENCE WAS THE RESULT OF THE EXAMINATION OF WITNESSES CALLED BY THE BOARD IN RELATION TO THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT. THE APPLICANT CALLED EVIDENCE, BUT IT WAS IN RELATION TO THE MEMBERSHIP CAMPAIGN CONDUCTED BY OFFICERS OF THE APPLICANT TRADE UNION. NONE OF THE EVIDENCE TENDERED BY THE APPLICANT TOUCHES ON THE EVIDENCE HEARD BY THE BOARD IN RELATION TO THE ALLEGATION OF NON-PAY; HOWEVER, THE EVIDENCE CALLED BY THE APPLICANT ITSELF POSES CERTAIN PROBLEMS WHICH WE SHALL DEAL WITH LATER.

15. ON THE BASIS OF THE EVIDENCE HEARD BY THE BOARD IN ITS HEARING INTO THE ALLEGATIONS OF NON-PAY, IT IS CLEAR THAT THE APPLICANT CANNOT SUCCEED IN THIS APPLICATION FOR CERTIFICATION. WITH RESPECT TO THOSE CARDS ON WHICH HAROLD HARRIS APPEARS AS COLLECTOR, THE EVIDENCE DISCLOSES TWO INSTANCES IN WHICH NO PAYMENT OF A \$1.00 WAS MADE IN RELATION TO THE APPLICATION FOR MEMBERSHIP IN THE APPLICANT. FURTHER, NO EVIDENCE WAS GIVEN THAT HARRIS DID COLLECT THE \$1.00 WITH RESPECT TO THE REMAINING CARD SUBMITTED BY THE CLAC SHOWING HAROLD HARRIS AS COLLECTOR. ALTHOUGH HARRIS IS AN EMPLOYEE COLLECTOR THE FACT THAT THERE WAS A NON-PAYMENT OF THE REQUIRED \$1.00 FOR TWO OF THE THREE CARDS SUBMITTED BY HARRIS LEADS TO THE CONCLUSION THAT NONE OF THE CARDS SUBMITTED BY THIS COLLECTOR CONSTITUTE ACCEPTABLE EVIDENCE OF MEMBERSHIP IN THE APPLICANT. IT IS ALSO CLEAR THAT THE SIX CARDS SINGLED OUT BY VICTOR POWELL AS CONTAINING FORGERIES OF HIS SIGNATURE CANNOT UNDER ANY CIRCUMSTANCES BE ACCEPTABLE EVIDENCE OF MEMBERSHIP FOR THE APPLICANT.



16. WE NOW TURN TO THE CARDS SUBMITTED BY GEORGE SMITH. SMITH WAS, AS HAS BEEN INDICATED, AN EMPLOYEE WHO ACTED AS A CANVASSER ON BEHALF OF THE APPLICANT. THE PRACTICE THAT SMITH USED WITH RESPECT TO THE ENVELOPE OF CARDS HE RECEIVED AT THE WEIGH SCALE IN SIMCOE, DOES NOT SIMPLY TAINT THE CARDS IN THAT ENVELOPE. THERE IS CLEAR EVIDENCE THAT IN TWO SUCH CASES SMITH SIGNED AS COLLECTOR WHEN THE REAL COLLECTORS SHOULD HAVE BEEN EUGENE MONTAGUE AND HARLEY PHIBBS. HOWEVER, WE HAVE NO WAY OF KNOWING HOW MANY OTHER CARDS BEARING SMITH'S SIGNATURE AS COLLECTOR HAVE BEEN THE RESULT OF THIS PRACTICE. WE ARE THEREFORE OF THE OPINION THAT NONE OF THE TWENTY-TWO CARDS BEARING THE NAME OF GEORGE SMITH AS COLLECTOR CONSTITUTE ACCEPTABLE EVIDENCE OF MEMBERSHIP IN THE APPLICANT TRADE UNION.

17. AS A RESULT OF THE ABOVE FINDINGS THE EVIDENCE OF MEMBERSHIP IN THE APPLICANT HAS BEEN REDUCED IN THE FOLLOWING MANNER: THE APPLICANT FILED WITH THIS APPLICATION A TOTAL OF FIFTY-EIGHT COMBINATION APPLICATIONS FOR MEMBERSHIP AND RECEIPTS; OF THESE CARDS THERE WERE THREE SUBMITTED BY HAROLD HARRIS; THE SIX CARDS BEARING THE FORGED SIGNATURE OF VIC POWELL AND TWENTY-TWO CARDS SUBMITTED BY GEORGE SMITH. IN THE RESULT THE BEST POSITION THE APPLICANT CAN CLAIM IS TO HAVE SUBMITTED ACCEPTABLE EVIDENCE OF MEMBERSHIP ON BEHALF OF TWENTY-SEVEN PERSONS. IT IS THEREFORE CLEAR THAT THE APPLICANT DOES NOT REPRESENT MORE THAN THIRTY-FIVE PER CENT OF THE EMPLOYEES IN ANY BARGAINING UNIT WHICH THE BOARD MIGHT FIND TO BE APPROPRIATE FOR COLLECTIVE BARGAINING IN THE PRESENT CASE. HOWEVER, BEFORE DISMISSING THIS CASE THERE ARE SEVERAL MATTERS WHICH AROSE IN THE COURSE OF THE HEARING WHICH REMAIN TO BE DEALT WITH IN THIS DECISION.

18. THE APPLICANT THROUGHOUT THE HEARINGS OF THE ALLEGATIONS OF NON-PAY CONTINUALLY QUESTIONED THE EXTENSION OF THAT INQUIRY INTO AN INQUIRY INVOLVING THE DECLARATION CONCERNING MEMBERSHIP DOCUMENTS IN FORM 8. SINCE THE BOARD HAS SUFFICIENT EVIDENCE TO MAKE A FINDING IN THIS CASE ON THE EVIDENCE OF MEMBERSHIP IT IS NOT NECESSARY TO GO INTO THIS MATTER OTHER THAN TO POINT OUT THAT THE BOARD HAS ON NUMEROUS OTHER OCCASIONS INDICATED THAT THE DUTY TO DISCLOSE FACTS RELATING TO THE EVIDENCE OF MEMBERSHIP ON THE FORM 8 IS AN ABSOLUTE DUTY UPON THE APPLICANT. THUS, FOR INSTANCE, THE REQUEST BY THE APPLICANT IN THE COURSE OF THE HEARING TO WITHDRAW CARDS WHICH HE KNEW TO BE UNACCEPTABLE EVIDENCE OF MEMBERSHIP DIRECTLY RAISES THE VALIDITY OF THE FORM 8 FILED IN THIS MATTER, AND IN THE ABSENCE OF DISCLOSURE OF THESE DEFECTS (WHICH THE APPLICANT WAS NOT PREPARED TO DO AT THAT TIME) THE FORM 8 SUBMITTED IN THIS APPLICATION WOULD IMMEDIATELY HAVE BEEN CALLED INTO QUESTION.

19. EARLIER IN THIS DECISION IT WAS POINTED OUT THAT THE APPLICANT'S EVIDENCE IN RESPONSE TO THE ALLEGATIONS OF NON-PAY INVOLVED EVIDENCE BY THREE PAID ORGANIZERS OF THE APPLICANT. THE GIST OF THE EVIDENCE TENDERED BY THE APPLICANT WAS THAT EMPLOYEE ORGANIZERS WERE USED BECAUSE OF THE LARGE NUMBER OF EMPLOYEES INVOLVED AND THE RELATIVELY SHORT TIME WHICH THE APPLICANT HAD TO ORGANIZE THE EMPLOYEES. HOWEVER MUCH SOLACE THE APPLICANT MAY DERIVE FROM THIS EXCUSE IT DOES NOT JUSTIFY

THE SLOPPY METHODS NOR THE IRREGULAR PRACTICES WHICH WERE USED IN ORGANIZING THE EMPLOYEES IN THIS CASE. OF PARTICULAR IMPORTANCE IS THE EVIDENCE OF JOHN ADEMA, WHO AT THE TIME IN QUESTION, WAS A TRAINEE ORGANIZER FOR THE CLAC. IT IS CLEAR FROM MR. ADEMA'S EVIDENCE THAT IN THE PRESENCE OF JOHN VENDERLAN, A MORE EXPERIENCED ORGANIZER FOR THE CLAC, MR. ADEMA COMPLETED CERTAIN BLANKS ON CARDS WHICH WERE LATER SUBMITTED ON BEHALF OF THE APPLICANT. THIS INCLUDED AMONGST OTHER THINGS FILLING IN THE AMOUNT PAID BY THE APPLICANT FOR MEMBERSHIP AND THE DATE ON WHICH THIS AMOUNT WAS PAID. THIS WAS DONE IN RELATION TO CARDS FOR WHICH MR. ADEMA WAS NOT SHOWN AS THE COLLECTOR, AND FURTHER FOR CARDS IN RESPECT OF WHICH HE HAD NO PERSONAL KNOWLEDGE OF THE MATTERS INVOLVED. ALTHOUGH IT IS NOT NECESSARY FOR US TO MAKE A FINDING IN THIS MATTER, WE ARE OF THE OPINION THAT SUCH CONDUCT BY A PAID UNION ORGANIZER MAY WELL CONSTITUTE A FATAL DEFECT TO ALL THE EVIDENCE OF MEMBERSHIP TENDERED BY THE APPLICANT.

20. MUCH OF THE EVIDENCE TENDERED BY THE CLAC WENT TO SHOW THAT IN EACH CASE WHERE CARDS HAD BEEN COLLECTED, WHEN THOSE CARDS WERE TURNED OVER TO SOMEONE ELSE THE RECIPIENT OF THE CARDS WAS CAREFUL TO ASK QUESTIONS SUFFICIENT TO COMPLETE THE DECLARATION IN FORM 8. FURTHER, WHEN THE PERSON WHO RECEIVED THE CARDS TURNED THOSE CARDS OVER TO SOMEONE ELSE, THE SAME QUESTIONS WERE ASKED BY THE NEW RECIPIENT OF THE CARDS. THE PROCESS WAS CONTINUED FOR EACH SUCCESSIVE STAGE UP TO MR. VANDERKLOET, THE FINAL RECIPIENT OF THE CARDS, AND THE PERSON WHO COMPLETED THE FORM 8 IN THIS CASE. COUNSEL FOR THE OPERATING ENGINEERS SUGGESTS THAT THIS WAS A PRACTICE FATAL TO THE FORM 8 FILED IN THIS MATTER. HE SUGGESTS THAT THE PROPER COURSE FOR AN APPLICANT FOR CERTIFICATION IS THAT THE PERSON COMPLETING THE FORM 8 SHOULD PERSONALLY ASK EACH COLLECTOR THE QUESTION NECESSARY FOR HIM TO COMPLETE THE FORM 8. ALTHOUGH IT IS NOT NECESSARY FOR US TO MAKE A FINDING IN THIS MATTER, IT IS CLEAR FROM THE EVIDENCE IN THIS CASE THAT HAD SUCH A PROCEDURE BEEN FOLLOWED BY THE APPLICANT IN THIS CASE THE DEFECTS IN THE EVIDENCE OF MEMBERSHIP WOULD EASILY HAVE COME TO LIGHT TO AN OFFICER OF THE APPLICANT. CERTAINLY, THE DESIRE TO PRESENT CAREFULLY SCRUTINIZED EVIDENCE OF MEMBERSHIP, RATHER THAN THE FEAR OF DISMISSAL OF THE APPLICATION SHOULD JUSTIFY THE USE OF THE MORE METICULOUS PROCEDURE SUGGESTED BY COUNSEL FOR THE OPERATING ENGINEERS.

21. IN LIGHT OF THE BOARD'S FINDING IN PARAGRAPH 17 THIS APPLICATION IS DISMISSED.

3185-72-R: LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, S.E.I.U., A.F.L., C.I.O., C.L.C. (APPLICANT) V. ST. RAPHAEL'S NURSING HOMES LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: D.E. FRANKS, VICE-CHAIRMAN, AND BOARD MEMBERS J.D. BELL AND E. BOYER.

DECISION OF THE BOARD:

MARCH 20, 1973.

1. BY A DECISION DATED MARCH 5, 1973, THE BOARD DIRECTED THE TAKING OF A REPRESENTATION VOTE OF THE EMPLOYEES OF THE RESPONDENT IN A BARGAINING UNIT. THE MATTER WAS THEN REFERRED TO THE REGISTRAR TO CONDUCT THE VOTE IN ACCORDANCE WITH THE BOARD'S RULES OF PROCEDURE. ON MARCH 6, 1973, THE REGISTRAR SENT NOTICE OF THAT DECISION TO THE APPLICANT AND THE RESPONDENT TOGETHER WITH A PAMPHLET ENTITLED REGISTRAR'S INSTRUCTIONS REGARDING VOTE. THE REGISTRAR ALSO ADVISED THE PARTIES TO ARRANGE FOR A MUTUALLY CONVENIENT DATE FOR A CONFERENCE CONCERNING THE CONDUCT OF THE VOTE.

2. THE REGISTRAR'S INSTRUCTIONS REGARDING THE TAKING OF THE VOTE INCLUDED A SAMPLE FORM OF BALLOT TO BE USED IN THE REPRESENTATION VOTE. THE SAMPLE BALLOT AND THE ACTUAL BALLOT USED IN A REPRESENTATION VOTE ARE DERIVED FROM FORM 42 OF THE BOARD'S RULES OF PROCEDURE. THIS FORM IS PART OF THE BOARD'S RULES OF PROCEDURE AND HAS BEEN MADE BY THE ONTARIO LABOUR RELATIONS BOARD PURSUANT TO SECTION 91(12) OF THE ACT AND APPROVED BY THE LIEUTENANT GOVERNOR IN COUNCIL. FORM 42 IS ENTITLED 'NOTICE OF TAKING OF VOTE BY THE ONTARIO LABOUR RELATIONS BOARD' AND IS A NOTICE TO THOSE EMPLOYEES ELIGIBLE TO VOTE OF PARTICULARS REGARDING THE REPRESENTATION VOTE. THE PURPOSE OF SUCH A FORM IS, OF COURSE, TO ALLOW THE EMPLOYEES TO FAMILIARIZE THEMSELVES WITH THE MANNER IN WHICH THE VOTE WILL BE CONDUCTED AND WITH THE BALLOT UPON WHICH THEY WILL INDICATE THEIR CHOICE IN THE REPRESENTATION VOTE. THE REGISTRAR'S INSTRUCTIONS INDICATE THAT THESE FORMS ARE TO BE POSTED SEVERAL DAYS PRIOR TO THE DATE OF THE VOTE, THUS GIVING THE EMPLOYEES AMPLE OPPORTUNITY TO INSPECT THE NOTICE.

3. BY A LETTER DATED MARCH 13TH, THE RESPONDENT HAS SUGGESTED THAT BECAUSE OF THE FORM OF THE BALLOT SOME SORT OF PSYCHOLOGICAL ADVANTAGE ACCRUES TO THE APPLICANT TRADE UNION IN THE TAKING OF THE REPRESENTATION VOTE. HAVING REGARD TO THE NORMAL PROCEDURE OF GIVING THE EMPLOYEES AMPLE OPPORTUNITY TO ACQUAINT THEMSELVES WITH THE MANNER IN WHICH THE VOTE WILL BE CONDUCTED AND THE FORM OF THE BALLOT USED IN THAT VOTE, IT CANNOT BE SAID THAT AN EMPLOYEE IS CONFRONTED WITH THE FORM OF THE BALLOT IN THE SECRECY OF A POLLING BOOTH. ACCORDINGLY, WE FIND THE PRELIMINARY OBJECTION OF THE RESPONDENT TO BE SPECIOUS AND LACKING ANY MERIT WHATSOEVER.

4. THE REGISTRAR IS DIRECTED TO PROCEED WITH THE TAKING OF THE REPRESENTATION VOTE IN ACCORDANCE WITH THE BOARD'S DECISION OF MARCH 7, 1973.

3413-72-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) v. EILPRO HOLDINGS INC. (RESPONDENT).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS H. J. F. ADE AND E. BOYER.

DECISION OF THE BOARD:

MARCH 21, 1973.



5. THE BOARD FURTHER FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 108 OF THE LABOUR RELATIONS ACT.

6. THE APPLICANT IS SEEKING CERTIFICATION ON BEHALF OF ITS REGULAR CRAFT UNIT IN BOARD AREA #8.

THE UNIT OF EMPLOYEES SUGGESTED BY THE RESPONDENT AS BEING APPROPRIATE FOR COLLECTIVE BARGAINING IS SIMILAR TO THE UNIT PROPOSED BY THE APPLICANT BUT WITH THE LIMITATION OF RESTRICTING THE UNIT TO EMPLOYEES "WORKING IN THE RESIDENTIAL SECTOR." THE RESPONDENT HAS CONSENTED TO THE APPLICATION BEING DISPOSED OF BY THE BOARD WITHOUT A HEARING BY THE BOARD AND HAS MADE THE FOLLOWING REPRESENTATIONS:

THE RESPONDENT SUBMITS THAT THE BOARD OUGHT TO LIMIT THE BARGAINING UNIT TO THE RESIDENTIAL SECTOR BECAUSE THE APPLICANT HAS ESTABLISHED DIFFERENT COLLECTIVE AGREEMENTS WITH EMPLOYERS IN THE RESIDENTIAL SECTOR AS OPPOSED TO EMPLOYERS IN THE INDUSTRIAL, COMMERCIAL AND INSTITUTIONAL SECTOR.

7. THE BOARD HAS CONSIDERED THE SUBMISSIONS OF THE RESPONDENT. SECTION 106(E) OF THE LABOUR RELATIONS ACT STATES:

"SECTOR" MEANS A DIVISION OF THE CONSTRUCTION INDUSTRY AS DETERMINED BY WORK CHARACTERISTICS AND INCLUDES THE INDUSTRIAL, COMMERCIAL AND INSTITUTIONAL SECTOR, THE RESIDENTIAL SECTOR, THE SEWERS, TUNNELS AND WATERMAINS SECTOR, THE ROADS SECTOR, THE HEAVY ENGINEERING SECTOR, THE PIPELINE SECTOR AND THE ELECTRICAL POWER SYSTEMS SECTOR;

THE PROVISIONS OF THE LABOUR RELATIONS ACT DEALING WITH THE ACCREDITATION OF EMPLOYERS' ORGANIZATIONS HAVE BEEN IN EFFECT FOR A COMPARATIVELY SHORT PERIOD OF TIME. IT MAY WELL BE THAT SECTORS ADDITIONAL TO THE SECTORS SPECIFICALLY MENTIONED IN SECTION 106(E) OF THE LABOUR RELATIONS ACT MAY BE DETERMINED BY THE BOARD IN APPLICATIONS FOR ACCREDITATION, CONSTRUCTION INDUSTRY. ACCORDINGLY, WE ARE OF THE OPINION THAT IT WOULD BE PREMATURE AT THIS TIME FOR THIS DIVISION OF THE BOARD TO DETERMINE BARGAINING UNITS WITH REFERENCE TO A SECTOR AS REQUESTED BY THE RESPONDENT.

8. HAVING REGARD TO THE FOREGOING, THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING

AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

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10. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

1349-71-R: LOCAL 1190 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. 228095 INVESTMENTS LIMITED, CARRYING ON BUSINESS UNDER THE NAME OF ADENA FORMING LTD. (RESPONDENT) V. CANADIAN UNION OF CONSTRUCTION WORKERS (INTERVENER #1) V. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (INTERVENER #2).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBER E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: T. E. ARMSTRONG FOR THE APPLICANT; J. B. NOONAN, L. G. WALKER AND ORESTE CAMPEOTTO FOR THE RESPONDENT; NO ONE APPEARING FOR THE INTERVENER #1 AND A. M. MINSKY, L. CASTALDO AND Q. CEOLIN FOR THE INTERVENER #2.

DECISION OF THE BOARD: MARCH 22, 1973.

1. INTERVENER #2 HAS QUESTIONED THE CREDIBILITY OF THE WITNESSES WHO HAVE SO FAR BEEN EXAMINED IN THE INQUIRY CONDUCTED BY THE EXAMINER. THE BOARD HELD A HEARING IN ORDER THAT THE PARTIES WOULD HAVE AN OPPORTUNITY TO MAKE THEIR SUBMISSIONS TO THE BOARD IN CONNECTION WITH THE ISSUE OF THE CREDIBILITY OF THESE WITNESSES.

2. THE BOARD HAS CONSIDERED THE REPRESENTATIONS OF THE PARTIES AND HAS CAREFULLY ANALYZED THE EVIDENCE CONTAINED IN THE INTERIM REPORT OF THE EXAMINER DATED DECEMBER 5, 1972.

3. THERE IS NO DOUBT THAT SOME OF THE WITNESSES DIFFER WITH EACH OTHER ON CERTAIN POINTS. HOWEVER, THERE IS ALSO NO DOUBT THAT MOST OF THE WITNESSES ARE IN SUBSTANTIAL AGREEMENT ON MANY OF THE POINTS RAISED BY THE QUESTIONS PUT TO THE WITNESSES.

4. THE SO-CALLED INCONSISTENCIES IN THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER DO NOT APPEAR, UPON A CLOSE EXAMINATION, TO BE NECESSARILY IN CONFLICT. STATEMENTS HAVE BEEN MADE BY THE WITNESSES WHICH DO NOT, FOR EXAMPLE, INDICATE THE PERIOD OF TIME, THE JOB-SITE, THE WORK-CREW OR EVEN THE EMPLOYER REFERRED TO IN THE ANSWER.

5. IT IS, OF COURSE, THE FUNCTION OF COUNSEL TO ELICIT INFORMATION FROM THE WITNESSES ON THE RELEVANT ISSUES BEFORE THE BOARD. IT APPEARS TO THE BOARD THAT COUNSEL HAVE FOR THE MOST PART NOT CONDUCTED THEIR QUESTIONING OF WITNESSES SO AS TO SET THE ANSWERS GIVEN BY THE WITNESSES IN THE PROPER CONTEXT. IT MAY WELL BE THAT MORE INCISIVE CROSS-EXAMINATION BY COUNSEL WOULD CLARIFY THE SO-CALLED INCONSISTENCIES. THE BOARD POINTS OUT THAT THE JOB LOCATION, EXPERIENCE, WORK HABITS AND SKILLS OF THE WITNESSES MAY VARY CONSIDERABLY AMONG THE WITNESSES.

6. THE FACT THAT VARIATIONS EXIST IN THE EVIDENCE OF THE WITNESSES WHO APPEARED BEFORE THE EXAMINER, DOES NOT, IN THE CIRCUMSTANCES OF THIS APPLICATION, IMPUGN THE CREDIBILITY OF THESE WITNESSES.

7. HAVING REGARD TO THE EVIDENCE BEFORE THE BOARD AND TO THE REPRESENTATIONS OF THE PARTIES, THE REQUEST THAT THE BOARD, AS OPPOSED TO THE EXAMINER, CONDUCT THE EXAMINATION OF ALL THE WITNESSES WHO HAVE AND WILL APPEAR BEFORE THE EXAMINER, IS DENIED.

8. THE EXAMINER IS DIRECTED TO CONTINUE HIS EXAMINATION IN THIS MATTER FORTHWITH.

3329-72-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. THE INTERNATIONAL NICKEL COMPANY OF CANADA LIMITED (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS O. HODGES AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: LORNE INGLE AND HENRY GAREAU FOR THE APPLICANT; ALEX MCCUAIG AND COLIN MORLEY FOR THE RESPONDENT.

DECISION OF THE BOARD: MARCH 22, 1973.

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3. THE APPLICANT HAS APPLIED FOR CERTIFICATION AS BARGAINING AGENT FOR A UNIT COMPOSED OF ALL EMPLOYEES OF THE RESPONDENT COMPANY AT ITS SHEBANDOWAN MINE AND MILL OPERATIONS. THE PARTIES ARE IN AGREEMENT THAT THE ABOVE UNIT IS APPROPRIATE FOR COLLECTIVE BARGAINING. THE PARTIES ARE FURTHER IN AGREEMENT THAT FOREMEN AND SUPERVISORS AND PERSONS ABOVE THE RANK OF FOREMAN AND SUPERVISOR ARE THE LOWEST LINE OF MANAGEMENT AND THAT OFFICE AND CLERICAL STAFF AND STUDENTS EMPLOYED FOR THE SCHOOL VACATION PERIOD SHOULD BE EXCLUDED FROM THE UNIT. THE APPLICANT ALSO PROPOSES THE EXCLUSION OF ENGINEERS, GEOLOGISTS AND SURVEYORS. THE RESPONDENT FOR ITS PART PROPOSES THE EXCLUSION OF ALL EMPLOYEES IN THE ADMINISTRATION DEPARTMENT, THE MINE ENGINEERING DEPARTMENT, AND THE MINE EXPLORATION DEPARTMENT. THE APPLICANT IS NOT PREPARED TO AGREE TO THE EXCLUSION OF THE EMPLOYEES IN THE ABOVE THREE NAMED DEPARTMENTS WITHOUT KNOWING WHAT CLASSIFICATIONS OF EMPLOYEES WOULD BE INVOLVED IN SUCH EXCLUSIONS FROM THE UNIT.



4. THE PARTIES AT THE HEARING AGREED THAT AN EXAMINER THEREFORE SHOULD BE APPOINTED TO INQUIRE INTO THE CLASSIFICATIONS EMPLOYED IN THE SAID DEPARTMENTS. MR. H. C. DRAPER, EXAMINER, ACCORDINGLY IS AUTHORIZED TO INQUIRE INTO AND REPORT TO THE BOARD ON THE COMPOSITION OF THE BARGAINING UNIT AND MORE PARTICULARLY AS IT RELATES TO THE ADMINISTRATION DEPARTMENT, MINE ENGINEERING DEPARTMENT AND MINE EXPLORATION DEPARTMENT OF THE RESPONDENT.

5. COUNSEL FOR THE RESPONDENT SUBMITS THAT THE INSTANT APPLICATION IS PREMATURE ON THE GROUNDS THAT AS OF THE DATE OF THE MAKING OF THE APPLICATION THE EMPLOYEES IN THE BARGAINING UNIT DID NOT CONSTITUTE A SUBSTANTIAL AND REPRESENTATIVE SEGMENT OF THE WORK FORCE TO BE EMPLOYED AND THAT THE RESPONDENT HAS A PLANNED PROGRAM FOR THE BUILD-UP OF ITS WORK FORCE WITHIN A SPECIFIED PERIOD. COUNSEL FOR THE RESPONDENT ADDUCED EVIDENCE IN SUPPORT OF HIS SUBMISSION.

6. THE EVIDENCE ADDUCED, WHICH WAS NOT DISPUTED, IS THAT AS OF THE DATE OF APPLICATION ONLY 28 EMPLOYEES WERE EMPLOYED IN THE RESPONDENT'S PLANT OPERATIONS AND NONE IN ITS MINING OPERATIONS. OF THE 28 IN ITS PLANT OPERATIONS, 12 WERE EMPLOYED IN THE RESPONDENT'S MAINTENANCE DEPARTMENT IN THREE CLASSIFICATIONS. THE PLANNED BUILD-UP CALLS FOR THE HIRING OF AN ADDITIONAL 51 MAINTENANCE EMPLOYEES IN A TOTAL OF FIVE CLASSIFICATIONS. THE RESPONDENT PLANS TO HAVE 30 MAINTENANCE EMPLOYEES BY THE END OF MARCH, 45 BY THE END OF APRIL AND A FINAL TOTAL OF 63 BY THE END OF MAY. IN THE MILL AREA, THE RESPONDENT HAD 16 EMPLOYEES IN TWO CLASSIFICATIONS AS OF THE DATE OF APPLICATION, AND INTENDS TO HIRE EIGHT ADDITIONAL EMPLOYEES FOR THE MILL AREA IN TWO ADDITIONAL CLASSIFICATIONS IN MAY. WITH REGARD TO THE MINE OPERATIONS, THE RESPONDENT PLANS TO HAVE 30 EMPLOYEES BY THE END OF JUNE, 120 BY THE END OF JULY AND 192 BY NO LATER THAN THE END OF AUGUST. SOME FIFTEEN CLASSIFICATIONS OF EMPLOYEES WILL BE EMPLOYED IN THE MINE OPERATIONS. IN TOTAL THEN, BY AUGUST THE RESPONDENT ANTICIPATES THAT IT WILL HAVE A TOTAL WORK FORCE IN ITS PLANT AND MINE OPERATIONS OF APPROXIMATELY 280 EMPLOYEES. BASED ON THE ABOVE EVIDENCE, THE BOARD IS SATISFIED THAT THE RESPONDENT HAS A PLANNED PROGRAM TO INCREASE ITS WORK FORCE AND THAT THERE IS A REAL PROBABILITY THAT THE INCREASE WILL TAKE PLACE WITHIN THE SPECIFIED PERIOD.

7. IN CERTIFICATION APPLICATIONS IN THE PAST, WHERE THE BOARD HAS BEEN SATISFIED THAT A SUBSTANTIAL AND REPRESENTATIVE NUMBER OF EMPLOYEES HAVE NOT BEEN EMPLOYED BY THE RESPONDENT COMPANY AS OF THE DATE OF APPLICATION AND THAT THE EMPLOYER CONCERNED HAS A PLANNED PROGRAM FOR THE BUILD-UP OF ITS WORK FORCE WITHIN A SPECIFIED PERIOD, THE BOARD HAS POSTPONED THE MAKING OF ANY FINAL DETERMINATION ON THE APPLICATION UNTIL A FUTURE DATE. THE BOARD HAS REQUIRED THE EMPLOYER TO REPORT PERIODICALLY ON THE NUMBER OF PERSONS IN ITS EMPLOY IN THE BARGAINING UNIT AND AT SUCH TIME AS MORE THAN FIFTY PER CENT OF THE ANTICIPATED COMPLEMENT HAS BEEN HIRED, IT HAS DIRECTED THE TAKING OF A REPRESENTATION VOTE AMONG THE EMPLOYEES IN THE BARGAINING UNIT. IN THE EVENT THAT THE BUILD-UP DOES NOT PROGRESS AS PLANNED, THE BOARD WILL CONSIDER THE MEMBERSHIP POSITION OF

THE APPLICANT AS OF THE DATE OF THE MAKING OF THE APPLICATION FOR PURPOSES OF ITS DISPOSITION OF THE APPLICATION (SEE MCCORD CORPORATION CASE OLRB M.R. JUNE 1965 P. 203; RCA VICTOR COMPANY, LTD. CASE OLRB M.R. JANUARY 1967 P. 793; CANRON LIMITED CASE OLRB M.R. SEPTEMBER 1969 P. 750).

8. COUNSEL FOR THE APPLICANT SUBMITS THAT THE BOARD'S PAST PRACTICE IN THE DEFERMENT IN MAKING ITS DETERMINATION IN CERTIFICATION APPLICATIONS WHERE THERE IS EVIDENCE OF A PLANNED BUILD-UP IN THE WORK FORCE OF AN EMPLOYER HAS ONLY BEEN APPLIED TO INDUSTRIAL OPERATIONS AND THAT THE SAME CONSIDERATIONS SHOULD NOT BE APPLIED TO A PLANT AND MINING OPERATION SUCH AS THAT CARRIED ON BY THE PRESENT RESPONDENT. COUNSEL FOR THE APPLICANT URGED THE BOARD IN THE INSTANT CIRCUMSTANCES TO DEAL WITH THE APPLICATION ON THE BASIS OF THE RESPONDENT'S WORK FORCE AS OF THE DATE OF THE MAKING OF THE APPLICATION. COUNSEL FOR THE RESPONDENT SUBMITS THAT THE BOARD SHOULD DEPART FROM ITS PRACTICE IN RECENT YEARS IN DEALING WITH "BUILD-UP" SITUATIONS AND DISMISS THE APPLICATION, HAVING PARTICULAR REGARD TO THE PROVISIONS OF SECTION 70(2) OF THE ACT, WHICH HAVE THE EFFECT OF FREEZING EMPLOYMENT CONDITIONS AFTER A CERTIFICATION APPLICATION HAS BEEN MADE, WHICH, ACCORDING TO COUNSEL, WOULD PREJUDICE THE POSITION OF THE RESPONDENT.

9. HAVING CONSIDERED THE REPRESENTATIONS OF THE PARTIES, WE ARE NOT SATISFIED THAT THE BOARD SHOULD DEPART FROM THE MANNER IN WHICH IT HAS DEALT WITH PRIOR APPLICATIONS FOR CERTIFICATION WHERE THERE IS A PLANNED BUILD-UP IN THE WORK FORCE SIMPLY BY REASON OF THE FACT THAT THE RESPONDENT IS CARRYING ON A MINING OPERATION. NEITHER ARE WE SATISFIED THAT THERE IS ANY PREJUDICE TO THE POSITION OF THE RESPONDENT BY VIRTUE OF THE PROVISIONS OF SECTION 70(2) OF THE ACT WHICH MERITS THE BOARD ABANDONING ITS PRACTICE WITH REGARD TO "BUILD-UP" SITUATIONS. IN OUR VIEW, THE PRINCIPLES ENUNCIATED BY THE BOARD IN THE EMIL FRANT AND PETER WASELOVICH CASE 57 CLLC ¶18,057 ARE STILL RELEVANT AND SHOULD BE APPLIED IN THE INSTANT APPLICATION.

10. THE BOARD ACCORDINGLY DIRECTS THE RESPONDENT TO REPORT TO THE BOARD PERIODICALLY ON THE NUMBER OF PERSONS IN ITS EMPLOY AND THEIR JOB CLASSIFICATIONS. THE FIRST REPORT IS TO BE MADE ON MAY 1, 1973 AND EVERY FIFTEEN DAYS THEREAFTER UNTIL THE BOARD OTHERWISE DIRECTS.

3314-72-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) v. PERIMETER INDUSTRIES LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND E. BOYER.

APPEARANCES AT THE HEARING: R. RUSSELL AND W. WOODBECK FOR THE APPLICANT; W. WINKLER AND T. BYRON GOUDY FOR THE RESPONDENT.

DECISION OF THE BOARD:

MARCH 23, 1973.

1. FOLLOWING THE TAKING OF THE PRE-HEARING REPRESENTATION VOTE IN THIS MATTER A HEARING WAS HELD TO HEAR THE REPRESENTATIONS OF THE PARTIES CONCERNING THE DESCRIPTION OF THE BARGAINING UNIT IN THIS CASE. THE APPLICANT ARGUED THAT THE BARGAINING UNIT SHOULD COVER THE GEOGRAPHIC AREA OF THE COUNTY OF PETERBOROUGH WHEREAS THE RESPONDENT ARGUED THAT THE BARGAINING UNIT SHOULD BE GEOGRAPHICALLY RESTRICTED TO THE TOWNSHIP OF NORTH MONAGHAN. IT APPEARS FROM THE EVIDENCE THAT THE RESPONDENT HAD PREVIOUSLY OPERATED OUT OF PETERBOROUGH AND THAT THE APPLICANT HAD BEEN CERTIFIED AS BARGAINING AGENT FOR THE RESPONDENT'S EMPLOYEES AT PETERBOROUGH IN 1968. WHILE THE APPLICANT DID NOT ENTER INTO A COLLECTIVE AGREEMENT WITH THE RESPONDENT BECAUSE OF THE SHARP DECREASE IN THE NUMBER OF EMPLOYEES EMPLOYED BY THE RESPONDENT AT PETERBOROUGH IN 1968, THE BARGAINING RIGHTS HELD BY THE APPLICANT FOR THE PETERBOROUGH EMPLOYEES ARE STILL IN EXISTENCE.

2. IN 1970, AFTER THE RESPONDENT'S BUSINESS HAD INCREASED TO THE POINT WHERE FORTY-EIGHT EMPLOYEES WERE EMPLOYED AT PETERBOROUGH, THE RESPONDENT TRANSFERRED ITS OPERATIONS TO THE TOWNSHIP OF NORTH MONAGHAN, WHICH IS A RELATIVELY SHORT DISTANCE FROM ITS PETERBOROUGH PREMISES. THIS TRANSFER OF OPERATIONS WAS NOT PRECIPITATED BY ANY DEMAND BY THE APPLICANT TO BARGAIN FOR A COLLECTIVE AGREEMENT BUT APPARENTLY TOOK PLACE AS A RESULT OF PROPER BUSINESS CONSIDERATIONS.

3. ALTHOUGH THE APPLICANT EXPRESSED SUSPICIONS THAT THE COMPANY MAY AGAIN TRANSFER ITS OPERATIONS, THERE WAS NO EVIDENCE TO SUBSTANTIATE THESE SUSPICIONS. INDEED, EVEN IF THE OPERATIONS WERE AGAIN TRANSFERRED THERE IS NOTHING TO SUGGEST THAT THEY WOULD BE TRANSFERRED WITHIN THE COUNTY OF PETERBOROUGH RATHER THAN TO SOME OTHER LOCATION.

4. IT HAS BEEN THE BOARD'S LONG-STANDING AND CONSISTENT PRACTICE TO RESTRICT BARGAINING RIGHTS TO A GEOGRAPHIC AREA OF THE MUNICIPALITY WHERE THE EMPLOYER'S OPERATIONS ARE CARRIED ON. IN THIS REGARD SEE AUTOMATIC ELECTRIC (CANADA) LIMITED CASE, OLRB MONTHLY REPORT, JUNE 1968, P. 261; SPUN-METALS LIMITED CASE, OLRB MONTHLY REPORT, JANUARY 1970, P. 1254; TELE-DIRECT LTD. CASE, OLRB MONTHLY REPORT, AUGUST 1971, P. 490; GEORGE LANTHIER & FILS LIMITEE CASE, OLRB MONTHLY REPORT, SEPTEMBER 1971, P. 614; WITTICH'S BREAD LIMITED CASE, OLRB MONTHLY REPORT, JANUARY 1969, P. 1019; CANADA SAFEWAY LIMITED CASE, OLRB MONTHLY REPORT, MARCH 1972, P. 262.

5. AS INDICATED ABOVE THE BOARD'S CONSISTENT PRACTICE IS TO RESTRICT THE GEOGRAPHIC AREA OF BARGAINING UNITS TO THE MUNICIPALITY IN WHICH THE EMPLOYER'S OPERATIONS ARE CARRIED ON. IT IS ACKNOWLEDGED THAT THERE ARE CERTAIN EXCEPTIONS TO THIS GENERAL RULE. THE MOST NOTABLE EXCEPTION IS THAT THE BOARD RESTRICTS BARGAINING UNITS TO THE METROPOLITAN TORONTO AREA RATHER THAN RESTRICT THE BARGAINING UNITS TO THE CONSTITUENT BOROUGHS WHICH FORM THE METROPOLITAN TORONTO AREA. THIS PRACTICE WAS ADOPTED IN RECOGNITION OF THE FACT THAT WITH THE GROWTH OF THE TORONTO AND ADJOINING MUNICIPALITIES EXPANDING COMPANIES FOUND IT IMPOSSIBLE TO EXPAND THEIR OPERATIONS WITHOUT MOVING TO ONE OF THE



PERIPHERAL MUNICIPALITIES WHERE SUFFICIENT LAND IS AVAILABLE TO BUILD LARGER PLANTS. THE BOARD, IN ORDER TO AVOID THE RESULTING CONFUSION WHICH WOULD FLOW FROM A MULTIPLICITY OF APPLICATIONS WHICH WOULD BE NECESSITATED BY THE REMOVAL OF THE COMPANY PLANTS FROM TORONTO TO ADJACENT MUNICIPALITIES WHERE LAND WAS AVAILABLE TO EXPAND THEIR PARENTS, DETERMINED THAT IT WOULD SERVE THE BEST INTERESTS OF COLLECTIVE BARGAINING GENERALLY IF THE GEOGRAPHIC AREA OF THE BARGAINING UNITS FOR THE TORONTO AREA WAS DESCRIBED IN TERMS OF METROPOLITAN TORONTO.

6. IN THE ABSENCE OF REGULAR INTERCHANGE OR OTHER RELEVANT CONSIDERATIONS, THE BOARD CONFINES BARGAINING UNITS TO A SINGLE MUNICIPALITY. APART FROM RARE EXCEPTIONS WHERE SPECIAL CIRCUMSTANCES PREVAIL, THE BOARD HAS CONSISTENTLY REFUSED TO GRANT BARGAINING UNITS FOR ALL OF ONTARIO. THIS IS DONE IN ORDER TO PROTECT THE RIGHTS OF FUTURE EMPLOYEES IN OTHER LOCATIONS WHO MAY WISH TO CHOOSE A BARGAINING UNIT OF THEIR OWN CHOICE OR INDEED NO BARGAINING AGENT AT ALL. THE SAME CONSIDERATIONS APPLY TO THE BOARD'S REFUSAL TO EXTEND BARGAINING UNITS TO COVER A WHOLE COUNTY.

7. ACCORDINGLY, FOR THE REASONS SET OUT ABOVE, THE BOARD FINDS THAT ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF NORTH MONAGHAN, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

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11. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

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3409-72-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL 141 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) v. E. J. WRIGHT CENTRAL LTD. (RESPONDENT) v. UNITED STEELWORKERS OF AMERICA (INTERVENER).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND A. MAIN.

APPEARANCES AT THE HEARING: I. J. THOMSON FOR THE APPLICANT; EDWARD T. McDERMOTT FOR THE RESPONDENT; A. E. MUNRO FOR THE INTERVENER.

DECISION OF THE BOARD: MARCH 23, 1973.

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2. THE APPLICANT IS APPLYING FOR CERTIFICATION AS BARGAINING AGENT OF A UNIT OF EMPLOYEES OF THE RESPONDENT. THE RESPONDENT SUBMITS THAT IT CARRIES ON ASSOCIATED OR RELATED ACTIVITIES OR BUSINESSES IN CONJUNCTION

WITH WRIGHT ASSEMBLIES LIMITED BY REASON OF WHICH THE BOARD, PURSUANT TO SUBSECTION (4) OF SECTION 1 OF THE ACT, SHOULD TREAT THE RESPONDENT AND WRIGHT ASSEMBLIES LIMITED AS ONE EMPLOYER FOR PURPOSES OF THE ACT AND MORE PARTICULARLY FOR PURPOSES OF THE INSTANT APPLICATION. IN OTHER WORDS, THE POSITION OF THE RESPONDENT IS THAT THE APPROPRIATE UNIT WOULD ENCOMPASS THE EMPLOYEES OF BOTH COMPANIES.

3. THE INTERVENER WAS CERTIFIED BY THIS BOARD ON AUGUST 1, 1969 FOR A UNIT OF EMPLOYEES OF WRIGHT ASSEMBLIES LIMITED COMPOSED OF ALL EMPLOYEES OF THE SAID COMPANY AT STRATHROY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD. THE PARTIES SUBSEQUENTLY HAVE ENTERED INTO TWO COLLECTIVE AGREEMENTS COVERING THE ABOVE DESCRIBED EMPLOYEES. THE CURRENT COLLECTIVE AGREEMENT IS EFFECTIVE FROM APRIL 1, 1972 UNTIL MARCH 31, 1975. NONE OF THE EMPLOYEES OF THE RESPONDENT FOR WHOM THE APPLICANT IS SEEKING CERTIFICATION FALL WITHIN THE SCOPE OF THE SAID COLLECTIVE AGREEMENT AND THE REPRESENTATIVE OF THE INTERVENER AT THE HEARING ADVISED THE BOARD THAT THE INTERVENER DID NOT CLAIM TO REPRESENT THE EMPLOYEES OF THE RESPONDENT FOR WHOM THE APPLICANT IS SEEKING CERTIFICATION.

4. THE RESPONDENT IN ITS REPLY ALLEGES THAT THERE WAS COMMON OWNERSHIP, MANAGEMENT AND FINANCIAL CONTROL OF THE RESPONDENT AND WRIGHT ASSEMBLIES LIMITED AND THAT THE OPERATIONS OF THE TWO COMPANIES WERE CLOSELY INTERRELATED. THE RESPONDENT FURTHER CONTENDS THAT BOTH COMPANIES ARE REPRESENTED TO THE PUBLIC AS A SINGLE INTEGRATED ENTERPRISE AND THAT THERE WAS CENTRALIZED CONTROL OF THE EMPLOYEES OF BOTH COMPANIES IN MATTERS RELATING TO LABOUR RELATIONS. IN ITS REPLY THE RESPONDENT ELABORATED UPON THE ABOVE FACTORS.

5. LET US ASSUME FOR PURPOSE OF ARGUMENT THAT THE INTERRELATIONSHIP OF THE RESPONDENT AND WRIGHT ASSEMBLIES LIMITED IS SUCH AS THAT ALLEGED BY THE RESPONDENT. THE FACT REMAINS THAT THE INTERVENER ONLY ACQUIRED AND HOLDS THE BARGAINING RIGHTS FOR A CLEARLY DEFINED UNIT OF EMPLOYEES OF WRIGHT ASSEMBLIES LIMITED. INDEED, ALL JOB CLASSIFICATIONS AND WAGE RATES FOR THE EMPLOYEES OF WRIGHT ASSEMBLIES LIMITED INCLUDED IN THE UNIT ARE SET OUT IN APPENDIX "A" OF THE COLLECTIVE AGREEMENT IN EFFECT BETWEEN THE SAID COMPANY AND THE INTERVENER. AT NO TIME HAS THE INTERVENER SOUGHT OR ACQUIRED BY CERTIFICATION OR VOLUNTARY RECOGNITION BARGAINING RIGHTS FOR ANY OF THE EMPLOYEES OF THE RESPONDENT.

6. IN THE INDUSTRIAL-MINE INSTALLATIONS LIMITED CASE OLRB M.R. DECEMBER 1972 P. 1029, WHILE THE FACTS ARE NOT THE SAME AS THOSE BEFORE US IN THE INSTANT CASE, THE ISSUE INVOLVED IN THAT CASE IN ALL ESSENTIAL RESPECTS IS THE SAME AS THAT CONFRONTING THE BOARD IN THIS APPLICATION. THE BOARD IN THE ABOVE CITED CASE STATED AS FOLLOWS AT P. 1033:

. . . WE DO NOT THINK THAT SECTION 1(4) WAS INTENDED TO BE USED BY ONE TRADE UNION AS A BAR TO ANOTHER TRADE UNION OBTAINING BARGAINING

RIGHTS IN A COMPANY WHERE THE FIRST TRADE UNION HELD NO EXISTING BARGAINING RIGHTS WHATSOEVER. WHERE THE TRADE UNION IS CONFRONTED WITH A SITUATION RAISED BY SECTION 1(4) IT HAS AN OBLIGATION TO ACT PROMPTLY AND WHERE RELATED OR ASSOCIATED EMPLOYEES ARE DESIROUS OF OBTAINING THE BENEFITS OF SECTION 1(4) THEY TOO MUST ACT PROMPTLY. IF THE PARTIES CHOOSE TO LEAVE EXPOSED BARGAINING RIGHTS IN A MULTI-ENTITY SITUATION THEY DO SO AT THEIR PERIL AND AT THE RISK THAT ANOTHER TRADE UNION MAY ENTER THE SITUATION AND CLAIM THOSE EXPOSED BARGAINING RIGHTS.

IN THE INSTANT CASE IT IS THE RESPONDENT COMPANY WHICH IS ATTEMPTING TO RAISE A BAR TO THE APPLICATION BY REASON OF THE EXISTING BARGAINING RIGHTS HELD BY ANOTHER TRADE UNION FOR ONE OF TWO COMPANIES WHICH THE RESPONDENT SUBMITS SHOULD BE TREATED AS A SINGLE EMPLOYER FOR PURPOSES OF THE ACT.

7. THERE IS NO EVIDENCE THAT EITHER THE RESPONDENT OR THE INTER- VENER AT ANY TIME AFTER THE COMING INTO EFFECT OF SECTION 1(4) SOUGHT TO SECURE THE BENEFITS AFFORDED BY THAT SECTION. STATED ANOTHER WAY, THE INTERVENER DID NOT ASSERT ANY CLAIM TO BARGAINING RIGHTS FOR ANY OF THE EMPLOYEES OF THE RESPONDENT NOR DID THE RESPONDENT ACCORD RECOGNITION TO THE INTERVENER AS BARGAINING AGENT FOR ITS EMPLOYEES IN THE SAME UNIT FOR WHICH THE INTERVENER HELD BARGAINING RIGHTS FOR EMPLOYEES OF WRIGHT AS- SEMBLIES LIMITED NOTWITHSTANDING THE RESPONDENT'S ALLEGATION IN THE IN- STANT CASE THAT THE BUSINESSES OF THE TWO COMPANIES ARE CARRIED ON UNDER SUCH COMMON CONTROL THAT THEY SHOULD BE TREATED AS ONE EMPLOYER. RATHER THE EMPLOYEES OF THE RESPONDENT HAVE REMAINED UNREPRESENTED BY ANY TRADE UNION DURING THE THREE AND A HALF YEARS THAT THE INTERVENER HAS HELD THE BARGAINING RIGHTS FOR THE EMPLOYEES OF WRIGHT ASSEMBLIES LIMITED.

8. IN LIGHT OF THE FOREGOING CONSIDERATION, THE BOARD RULED ORALLY AT THE HEARING IN THIS MATTER, EVEN ASSUMING THAT THE BOARD WAS PREPARED TO TREAT THE RESPONDENT AND WRIGHT ASSEMBLIES LIMITED AS ONE EMPLOYER FOR PURPOSES OF THE ACT, AT THIS POINT, SUCH A DETERMINATION IS NOT A BAR TO THE INSTANT APPLICATION.

9. THE BOARD FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT STRATH- ROY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPRO- PRIATE FOR COLLECTIVE BARGAINING.

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11. A CERTIFICATE WILL ISSUE TO THE APPLICANT.



3286-72-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. VERMILION BAY CO-OPERATIVE LTD. (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND P. J. O'KEEFE.

DECISION OF THE BOARD: MARCH 30, 1973.

1. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.
2. THE APPLICANT IS APPLYING FOR CERTIFICATION AS BARGAINING AGENT FOR A UNIT COMPOSED OF ALL EMPLOYEES OF THE RESPONDENT REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD. THE RESPONDENT IN ITS REPLY STATES THAT IT HAS NO EMPLOYEES IN THE CLASSIFICATIONS SOUGHT BY THE APPLICANT.
3. AT THE HEARING OF THE APPLICATION, THE APPLICANT CHALLENGED THE STATEMENT MADE BY THE RESPONDENT IN ITS REPLY AND ALLEGED THAT THE RESPONDENT, IN FACT, DID HAVE PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK IN ITS EMPLOY. THE BOARD ACCORDINGLY AUTHORIZED MR. S. G. GRIZZLE, EXAMINER, TO INQUIRE INTO AND REPORT TO THE BOARD ON THE COMPOSITION OF THE BARGAINING UNIT AND MORE PARTICULARLY AS TO WHETHER THE RESPONDENT AS OF THE DATE OF THE MAKING OF THE INSTANT APPLICATION HAD IN ITS EMPLOY PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK WHO WOULD BE INCLUDED IN THE BARGAINING UNIT APPLIED FOR BY THE APPLICANT FOR PURPOSES OF THE COUNT.
4. IN ORDER TO BE INCLUDED IN A BARGAINING UNIT FOR PURPOSES OF THE COUNT, WHETHER IT BE A FULL-TIME OR PART-TIME UNIT, AN EMPLOYEE MUST HAVE BEEN AT WORK FOR AT LEAST SOME PERIOD OF TIME DURING A ONE MONTH PERIOD BOTH PRIOR TO AND SUBSEQUENT TO THE DATE OF THE MAKING OF AN APPLICATION FOR CERTIFICATION (SYDENHAM DISTRICT HOSPITAL CASE OLRB M.R. MAY 1967 P. 135). OF COURSE, IF AN EMPLOYEE WAS ACTUALLY AT WORK ON THE DATE OF APPLICATION, HE WOULD AUTOMATICALLY BE INCLUDED ON THE LIST OF EMPLOYEES FOR THE PURPOSE OF THE COUNT WITHOUT FURTHER INQUIRY. ASSUMING THE ABOVE REQUIREMENT IS MET, ANY EMPLOYEE IS EITHER REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK OR IS REGULARLY EMPLOYED FOR MORE THAN 24 HOURS PER WEEK. EMPLOYEES FALL IN ONE OR OTHER OF THESE TWO CATEGORIES. THERE IS NO THIRD CATEGORY (SYDENHAM DISTRICT HOSPITAL CASE, SUPRA) AND CENTRE GREY GENERAL HOSPITAL CASE OLRB M.R. MARCH 1968 P. 1172). IN MAKING THIS DETERMINATION, THE BOARD LOOKS AT THE EMPLOYMENT RECORD OF AN EMPLOYEE OR EMPLOYEES CONCERNED FOR A PERIOD OF SEVEN WEEKS IMMEDIATELY PRECEDING THE DATE OF THE MAKING OF THE APPLICATION. IF DURING THIS REPRESENTATIVE PERIOD AN EMPLOYEE WAS EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK OR, FOR THAT MATTER, NOT AT ALL DURING FOUR

OR MORE OF THE SEVEN WEEKS, THEN THAT EMPLOYEE WOULD BE CLASSIFIED AS A "PERSON REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK". CONVERSELY, OF COURSE, IF AN EMPLOYEE WAS EMPLOYED FOR FOUR OR MORE OF THE SEVEN WEEKS FOR MORE THAN 24 HOURS PER WEEK, SUCH AN EMPLOYEE WOULD BE CLASSIFIED AS BELONGING TO THE "FULL-TIME" BARGAINING UNIT (SYDENHAM DISTRICT HOSPITAL CASE, SUPRA).

5. HAVING REGARD TO ALL OF THE FOREGOING AND THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER, THE BOARD FINDS THAT AS OF THE DATE OF THE MAKING OF THE APPLICATION D. STOKER AND H. WESTERGARD WERE EMPLOYEES OF THE RESPONDENT REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK WHO WOULD BE INCLUDED IN THE BARGAINING UNIT SOUGHT BY THE APPLICANT FOR PURPOSES OF THE COUNT. D. BECKMAN, ON THE BASIS OF HIS EMPLOYMENT RECORD, WOULD ALSO FALL WITHIN THE CLASSIFICATION OF A PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK. ACCORDING TO THE EXAMINER'S REPORT, HOWEVER, HE IS AN OFFICE EMPLOYEE AND THEREFORE WOULD NOT FALL WITHIN THE PURVIEW OF THE UNIT APPLIED FOR BY THE APPLICANT.

6. THE APPLICANT IS APPLYING FOR A UNIT COMPOSED NOT ONLY OF PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK BUT ALSO STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD. WE WOULD MENTION THAT BOTH OF THESE CLASSIFICATIONS ARE EXCLUSIONS FROM THE RECOGNITION CLAUSE OF THE COLLECTIVE AGREEMENT COVERING THE RESPONDENT'S "FULL-TIME" EMPLOYEES. WHERE AN EMPLOYER HAS A HISTORY OF EMPLOYING BOTH OF THE ABOVE CLASSIFICATIONS OF EMPLOYEES, THE BOARD HAS FOUND THAT THE APPROPRIATE BARGAINING UNIT OF "PART-TIME" EMPLOYEES INCLUDES THE TWO CLASSIFICATIONS (CHAPPLES STORES LIMITED CASE OLRB M.R. JULY 1970 P. 530).

7. THE BOARD ACCORDINGLY FINDS THAT ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF MACHIN REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, SAVE AND EXCEPT OFFICE STAFF AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND RETAIL STORE EMPLOYEES UNION LOCAL No. 832, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

8. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN SIXTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON FEBRUARY 27, 1973, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2) (J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

9. A CERTIFICATE WILL ISSUE TO THE APPLICANT.







CAST LISTINGS MARCH 1973

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APPLICATION UNDER SECTION 55 DISPOSED OF DURING FEBRUARY

3086-72-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL, ORNAMENTAL IRON WORKERS AND RODMEN, AFL-CIO, LOCAL 765 (APPLICANT) V. HAMMOND STEEL INC. (RESPONDENT). (WITHDRAWN).

APPLICATIONS FOR DETERMINATION UNDER SECTION 95(2) DISPOSED OF DURING FEBRUARY

2376-72-M: INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, AFL-CIO-CLC (APPLICANT) V. PEPSI-COLA CANADA LTD. (RESPONDENT). (DISMISSED).

2778-72-M: UNITED GLASS AND CERAMIC WORKERS OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. DOMINION GLASS COMPANY LIMITED (RESPONDENT). (WITHDRAWN).

3102-72-M: CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 1321 (APPLICANT) V. RENFREW COUNTY BOARD OF EDUCATION (RESPONDENT). (WITHDRAWN).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

2219-72-R: LUMBER AND SAWMILL WORKERS' UNION, LOCAL 2995 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. ARROW TIMBER COMPANY LIMITED (RESPONDENT). (REQUEST DENIED).

2886-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. C. A. PITTS ENGINEERING CONSTRUCTION LTD. (RESPONDENT). (REQUEST DENIED).

2909-72-R: LABORERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL UNION No. 597 (APPLICANT) V. AARVI CONSTRUCTION COMPANY LIMITED (RESPONDENT). (REQUEST DENIED).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - SECTION 95(2)

3067-72-M: TORONTO STAR LIMITED (APPLICANT) V. LOCAL 87 TORONTO NEWS-PAPER GUILD (RESPONDENT). (REQUEST DENIED).

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD  
DURING MARCH 1973

BARGAINING AGENTS CERTIFIED DURING MARCH

NO VOTE CONDUCTED

18766-70-R: CSAO NATIONAL (INC.) (APPLICANT) V. NEW MOUNT SINAI HOSPITAL (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (INTERVENER).

UNIT: "ALL MEDICAL LABORATORY TECHNOLOGISTS AND TECHNICIANS AND LABORATORY ASSISTANTS EMPLOYED IN THE RESPONDENT'S DEPARTMENT OF MEDICAL LABORATORIES AT TORONTO, SAVE AND EXCEPT CHIEF TECHNOLOGISTS AND PERSONS ABOVE THE RANK OF CHIEF TECHNOLOGIST, OFFICE AND CLERICAL STAFF, STUDENTS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE SERVICE EMPLOYEES UNION, LOCAL 204 AND THE RESPONDENT AND THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 796." (39 EMPLOYEES IN THE UNIT). (FOR PURPOSES OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT ECG AND EEG AND TECHNICIANS, GLASS WASHERS, MORGUE ATTENDANTS, MEDICAL PHOTOGRAPHERS AND AUDIO-VISUAL ASSISTANTS ARE NOT INCLUDED IN THE BARGAINING UNIT.).

18768-70-R: CSAO NATIONAL (INC.) (APPLICANT) V. THE GREATER NIAGARA GENERAL HOSPITAL (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 772 (INTERVENER).

UNIT: "ALL MEDICAL LABORATORY TECHNOLOGISTS AND TECHNICIANS EMPLOYED BY THE RESPONDENT AT NIAGARA FALLS, SAVE AND EXCEPT ASSISTANT CHIEF TECHNOLOGISTS AND PERSONS ABOVE THE RANK OF ASSISTANT CHIEF TECHNOLOGIST, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS, AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE SERVICE EMPLOYEES' INTERNATIONAL UNION LOCAL 204." (24 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR PURPOSES OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT CHARGE TECHNOLOGISTS ARE INCLUDED IN THE BARGAINING UNIT.). (FOR PURPOSES OF CLARITY THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT PRACTISING MEMBERS OF THE MEDICAL AND NURSING PROFESSION, ELECTRO-CARDIOGRAM AND ELECTRO-ENCEPHALOGRAM TECHNICIANS ARE NOT INCLUDED IN THE BARGAINING UNIT.).

18773-70-R: CSAO NATIONAL (INC.) (APPLICANT) V. THE WELLESLEY HOSPITAL (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (INTERVENER) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL MEDICAL LABORATORY TECHNOLOGISTS, TECHNICIANS AND ASSISTANTS

EMPLOYED BY THE RESPONDENT IN ITS CLINICAL PATHOLOGY DEPARTMENT AT TORONTO, SAVE AND EXCEPT ASSISTANT CHIEF TECHNOLOGIST AND MEMBERS OF THE MEDICAL AND NURSING PROFESSIONS, PERSONS EMPLOYED AS MEDICAL LABORATORY STUDENTS, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, OFFICE AND CLERICAL STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND PERSONS BOUND BY SUBSISTING COLLECTIVE AGREEMENTS." (69 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR THE PURPOSES OF CLARITY, THE BOARD NOTED THE FURTHER AGREEMENT OF THE PARTIES THAT BIOCHEMISTS, PERSONS EMPLOYED IN RESEARCH WORK AND INFECTION CONTROL OFFICERS AND NURSES ARE NOT INCLUDED IN THE SAID BARGAINING UNIT.).

20-70-R: CSAO NATIONAL (INC.) (APPLICANT) V. OTTAWA GENERAL HOSPITAL (RESPONDENT) V. LE SYNDICAT DES SERVICES HOSPITALIERS DU DISTRICT D'OTTAWA (INTERVENER).

UNIT: "ALL LAY MEDICAL TECHNOLOGISTS EMPLOYED BY THE RESPONDENT IN ITS MEDICAL LABORATORIES AT OTTAWA, SAVE AND EXCEPT LABORATORY SCIENTISTS AND PERSONS ABOVE THE RANK OF LABORATORY SCIENTIST, STUDENT, OFFICE AND CLERICAL STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND LE SYNDICAT DES SERVICES HOSPITALIERS DU DISTRICT D'OTTAWA." (69 EMPLOYEES IN THE UNIT). (FOR PURPOSES OF CLARITY, THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT ECG AND EEG TECHNICIANS ARE NOT INCLUDED IN THE BARGAINING UNIT.).

22-70-R: CSAO NATIONAL (INC.) (APPLICANT) V. THE SALVATION ARMY GRACE HOSPITAL (RESPONDENT).

UNIT: "ALL MEDICAL LABORATORY TECHNOLOGISTS, TECHNICIANS AND LABORATORY ASSISTANTS EMPLOYED BY THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT ASSISTANT CHIEF TECHNOLOGISTS, PERSONS ABOVE THE RANK OF ASSISTANT CHIEF TECHNOLOGISTS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE CANADIAN UNION OF OPERATING ENGINEERS LOCAL 102, AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE SERVICE EMPLOYEES UNION LOCAL 210." (43 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR THE PURPOSE OF CLARITY, THE BOARD NOTED THE FURTHER AGREEMENT OF THE PARTIES THAT THE PERSONS CLASSIFIED AS BIOCHEMIST AND CLINICAL TUTOR ARE NOT INCLUDED IN THE SAID BARGAINING UNIT.).

488-71-R: THE GENERAL CONTRACTORS' SECTION OF THE TORONTO CONSTRUCTION ASSOCIATION (APPLICANT) V. THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNION #793 (RESPONDENT) V. THE ONTARIO ERECTORS ASSOCIATION (INTERVENER #1) V. THE METROPOLITAN TORONTO SEWER AND WATERMAIN CONTRACTORS ASSOCIATION (INTERVENER #2) V. ONTARIO ROAD BUILDERS ASSOCIATION (INTERVENER #3) V. THE METROPOLITAN TORONTO ROAD BUILDERS' ASSOCIATION (INTER-



VENER #4) V. HEAVY CONSTRUCTION ASSOCIATION OF TORONTO (INTERVENER #5)  
V. TORONTO AND DISTRICT EXCAVATORS ASSOCIATION (INTERVENER #6) V. CRANE  
RENTAL ASSOCIATION OF ONTARIO (INTERVENER #7).

UNIT: "ALL EMPLOYERS OF OPERATING ENGINEERS FOR WHOM THE RESPONDENT HAS BARGAINING RIGHTS IN METROPOLITAN TORONTO, THE COUNTIES OF YORK AND PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO IN THE INDUSTRIAL, COMMERCIAL AND INSTITUTIONAL SECTOR, SAVE AND EXCEPT THOSE EMPLOYERS OF OPERATING ENGINEERS FOR WHOM THE RESPONDENT HAS BARGAINING RIGHTS WHO ARE REGULARLY EMPLOYED THROUGHOUT THE PROVINCE OF ONTARIO IN THE ERECTION OF STRUCTURAL STEEL AND MECHANICAL EQUIPMENT."  
(NO EMPLOYEES IN THE UNIT).

[1973] 2 OLRB M.R. - PAGE 131.

571-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183  
(APPLICANT) V. 227223 EARTH MOVING LIMITED TRADING AS MAPLE EARTH MOVING  
COMPANY (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTRUCTION LABOURERS ENGAGED IN BUILDING PROJECTS, AND SHOP AND YARD EMPLOYEES." (24 EMPLOYEES IN THE UNIT).

2304-72-R: TEAMSTERS LOCAL UNION 879 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. C.F. ANDERSON CONCRETE PRODUCTS LIMITED (RESPONDENT) V. CHRISTIAN LABOUR ASSOCIATION OF CANADA (INTERVENER) V. GROUP OF EMPLOYEES (OBJECTORS).

- AND -

2358-72-R: TEAMSTERS LOCAL UNION 879 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. C.F. ANDERSON CONCRETE PRODUCTS LIMITED (RESPONDENT) V. CHRISTIAN LABOUR ASSOCIATION OF CANADA (INTERVENER) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SIMCOE, SAVE AND EXCEPT FOREMEN, DISPATCHERS, PERSONS ABOVE THE RANK OF FOREMAN AND DISPATCHER, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD."  
(8 EMPLOYEES IN THE UNIT).

2608-72-R: LOCAL UNION 556, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) V. HYDRO ELECTRIC COMMISSION OF WELLAND (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL OFFICE EMPLOYEES OF THE RESPONDENT AT WELLAND, SAVE AND EX-

CEPT ACCOUNTANT AND ASSISTANT TREASURER, OFFICE SUPERVISOR, PERSONS ABOVE THE RANK OF ACCOUNTANT AND ASSISTANT TREASURER AND OFFICE SUPERVISOR, CUSTOMER RELATIONS AND MARKETING REPRESENTATIVE, PROGRAMMER, CONFIDENTIAL SECRETARY TO THE TREASURER AND ASSISTANT TREASURER, CONFIDENTIAL SECRETARY TO THE GENERAL MANAGER, PLANNING DEPARTMENT SUPERVISOR AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (17 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

2618-72-R: INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES LOCAL UNION 1891 (APPLICANT) v. C. ROMANELLI DRYWALL LTD. (RESPONDENT).

UNIT: "ALL PAINTERS AND PAINTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT). (FOR THE PURPOSES OF CLARITY THE BOARD DECLARED THAT DRYWALL TAPERS ARE INCLUDED IN THE BARGAINING UNIT.).

[1973] 2 OLRB M.R. - PAGE 147.

2753-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA (APPLICANT) v. WHITNEY MAINTENANCE LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF NIAGARA AND THE COUNTY OF HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (8 EMPLOYEES IN THE UNIT).

2877-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. THE CORPORATION OF THE COUNTY OF PEEL (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS HEALTH UNIT, SAVE AND EXCEPT SENIOR PUBLIC HEALTH INSPECTORS, ADMINISTRATIVE ASSISTANT II, DENTAL DIRECTOR AND PERSONS ABOVE THE RANK OF SENIOR PUBLIC HEALTH INSPECTOR, ADMINISTRATIVE ASSISTANT II AND DENTAL DIRECTOR, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD OR ON A CO-OPERATIVE TRAINING PROGRAM WITH RYERSON POLYTECHNICAL INSTITUTE AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE NURSES ASSOCIATION PEEL COUNTY HEALTH UNIT." (40 EMPLOYEES IN THE UNIT).

2927-72-R: UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL CIO CLC (APPLICANT) v. DUNLOP CANADA LIMITED (PLASTICS DIVISION) (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT AJAX, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (27 EMPLOYEES IN THE UNIT).

2934-72-R: FEDERATION OF CHILDREN'S AID STAFFS (APPLICANT) V. THE CHILDREN'S AID SOCIETY OF SAULT STE. MARIE AND THE DISTRICT OF ALGOMA (RESPONDENT).

UNIT: "THE SOCIAL WORKERS, SOCIAL WORK ASSISTANTS AND CASE-AIDES REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK BY THE RESPONDENT, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (14 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

[1973] 2 OLRB M.R. - PAGE 161.

2948-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE BOROUGH OF YORK PLANNING BOARD (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT THE BOROUGH OF YORK, SAVE AND EXCEPT THE CHIEF PLANNER AND PERSONS ABOVE THE RANK OF CHIEF PLANNER." (9 EMPLOYEES IN THE UNIT).

2960-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 2679 (APPLICANT) V. MAIN LUMBER COMPANY (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OAKVILLE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (46 EMPLOYEES IN THE UNIT).

3077-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE TOWN OF DUNNVILLE (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS DEPARTMENT OF PUBLIC WORKS, SAVE AND EXCEPT TOWN FOREMAN, CHIEF OPERATOR OF THE POLLUTION CONTROL PLANT, PERSONS ABOVE THE RANKS OF TOWN FOREMAN AND CHIEF OPERATOR OF THE POLLUTION CONTROL PLANT, OFFICE AND CLERICAL EMPLOYEES AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (14 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE FINDINGS SET OUT ABOVE AND THE AGREEMENT OF THE PARTIES).

3110-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE YORK COUNTY ROMAN CATHOLIC SEPARATE SCHOOL BOARD (RESPONDENT) V. EMPLOYEES (OBJECTORS).

UNIT #1: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (26 EMPLOYEES IN THE UNIT).

(BARGAINING UNIT #2 - SEE APPLICATION CERTIFIED SUBSEQUENT TO POST-HEARING VOTE).



3114-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. MATTAWA FOREST PRODUCTS DIVISION OF SKLAR FURNITURE LIMITED (RESPONDENT) V. INTERNATIONAL WOODWORKERS OF AMERICA (INTER-VENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN PAPINEAU TOWNSHIP, SAVE AND EXCEPT CHIEF ENGINEER, FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (4 EMPLOYEES IN THE UNIT).

3143-72-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. TIMMINS COACH LINES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT TIMMINS, SAVE AND EXCEPT MANAGER, PERSONS ABOVE THE RANK OF MANAGER, AND OFFICE STAFF." (18 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT INSPECTORS ARE NOT EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT. THE BOARD FURTHER NOTES THE AGREEMENT OF THE PARTIES THAT PERSONS CLASSIFIED AS DISPATCHER AND MECHANIC ARE EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT).

3159-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. WHITBY COMMUNITY CENTRES BOARD (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN WHITBY, SAVE AND EXCEPT ARENA MANAGER, PERSONS ABOVE THE RANK OF ARENA MANAGER AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (14 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (THE BOARD NOTED THE AGREEMENT OF THE PARTIES REFERRED TO IN PARAGRAPH TWO HEREIN).

3187-72-R: UNITED PAPERWORKERS INTERNATIONAL UNION (APPLICANT) V. BONAR & BEMIS LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS PAPER AND PACKAGING DIVISIONS AT BURLINGTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, SHIPPERS, OFFICE, SERVICE AND SALES STAFF." (157 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR THE PURPOSE OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE STOCK CLERK IS EXCLUDED FROM THE BARGAINING UNIT UNDER THE CLASSIFICATION OF OFFICE STAFF.).

3197-72-R: LOCAL UNION 804 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) V. STEVE'S ELECTRIC (GUELPH) LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT #1: "ALL ELECTRICIANS AND ELECTRICIANS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WATERLOO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (11 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES).

UNIT #2: "ALL ELECTRICIANS AND ELECTRICIANS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WELLINGTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (10 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES).

UNIT #3: "ALL ELECTRICIANS AND ELECTRICIANS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES).

3198-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION #493 (APPLICANT) V. C. A. McDOWELL LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WITHIN A FIFTY MILE RADIUS OF THE TIMMINS FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (10 EMPLOYEES IN THE UNIT).

3221-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 527 (APPLICANT) V. MARVO CONSTRUCTION LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (11 EMPLOYEES IN THE UNIT).

3231-72-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF LEEDS, GRENVILLE AND LANARK DISTRICT HEALTH UNIT (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF LEEDS, GRENVILLE AND LANARK, SAVE AND EXCEPT REGISTERED AND GRADUATE NURSES, BUSINESS ADMINISTRATOR AND PERSONS ABOVE THE RANK OF BUSINESS ADMINISTRATOR." (34 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

3246-72-R: LOCAL 280 OF THE INTERNATIONAL BEVERAGE DISPENSERS' AND BARTENDERS' UNION A.F.L. - C.I.O. - C.L.C. (APPLICANT) V. NOSA HOLDINGS LIMITED (RESPONDENT).

UNIT: "ALL FULL-TIME AND PART-TIME TAPMEN, BARTENDERS, BEVERAGES WAITERS, BAR BOYS AND IMPROVERS EMPLOYED BY THE RESPONDENT AT THE DANFORTH HOTEL IN METROPOLITAN TORONTO, SAVE AND EXCEPT MANAGER AND PERSONS ABOVE THE RANK OF MANAGER." (12 EMPLOYEES IN THE UNIT). (FOR PURPOSES OF CLARITY THE BOARD DECLARED THAT BEVERAGE WAITERS ALSO INCLUDE BEVERAGE WAITRESSES).

3248-72-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE, AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, LOCAL 1520 (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT LAMBETH, SAVE AND EXCEPT MANAGERS, PERSONS ABOVE THE RANK OF MANAGER, AND OFFICE STAFF." (2 EMPLOYEES IN THE UNIT).

3262-72-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. NATIONAL GROCERS COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS CASH & CARRY OPERATIONS AT NORTH BAY, SAVE AND EXCEPT MANAGERS, PERSONS ABOVE THE RANK OF MANAGER, SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (2 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

3263-72-R: OIL & GAS TECHNICIANS, SERVICE, DOMESTIC AND GENERAL WORKERS UNION LOCAL 1267 (APPLICANT) V. METAL IMPROVEMENT COMPANY INCORPORATED MICHIGAN DIVISION (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (65 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

3265-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. PROVIDENCE VILLA AND PROVIDENCE HOSPITAL (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 796, OFFICE AND CLERICAL STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (294 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR THE PURPOSES OF CLARITY THE BOARD DECLARED THAT THE TERM TECHNICAL PERSONNEL COMPRISES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS.).

3272-72-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 880 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. CORPORATION OF THE TOWNSHIP OF HARWICH (RESPONDENT).



UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN THE BUILDING AND MAINTENANCE OF TOWNSHIP ROADS SAVE AND EXCEPT FOREMEN, THOSE ABOVE THE RANK OF FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (8 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

3286-72-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. VERMILION BAY CO-OPERATIVE LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF MACHIN REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, SAVE AND EXCEPT OFFICE STAFF AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND RETAIL STORE EMPLOYEES UNION LOCAL NO. 832." (2 EMPLOYEES IN THE UNIT).

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3289-72-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 141, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. E. F. SAGE & SON (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF LONDON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND LOCAL 793 OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS." (2 EMPLOYEES IN THE UNIT).

3291-72-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. FEDERAL BOLT & NUT CORPORATION LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (147 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

3292-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. SCHWENGER CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE REGIONAL MUNICIPALITY OF NIAGARA AND THE COUNTY OF HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND PERSONS COVERED BY A COLLECTIVE AGREEMENT BETWEEN THE GENERAL CONTRACTORS' SECTION OF THE HAMILTON CONSTRUCTION ASSOCIATION AND BUILDERS' EXCHANGE AND LOCAL UNION 18, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA MADE ON JUNE 1, 1971." (8 EMPLOYEES IN THE UNIT).

3296-72-R: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) V. DU PONT OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PHOTO PRODUCTS WAREHOUSE LOCATED AT 115 IDEMA ROAD IN THE TOWNSHIP OF MARKHAM, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE SALES AND TECHNICAL STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (2 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

3297-72-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. ROYAL CITY LABOUR ASSOCIATION (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT GUELPH, SAVE AND EXCEPT THE BUILDING MANAGER AND PERSONS ABOVE THE RANK OF BUILDING MANAGER." (4 EMPLOYEES IN THE UNIT).

3302-72-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. MOTO-RITE LIMITED (RESPONDENT) V. EMPLOYEE (OBJECTOR).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS WAREHOUSE AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (19 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

3315-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837 (APPLICANT) V. DEL BROCCO CONTRACTING LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF NIAGARA AND THE COUNTY OF HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (13 EMPLOYEES IN THE UNIT).

3316-72-R: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) V. MANSONVILLE PLASTICS LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT AJAX, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (25 EMPLOYEES IN THE UNIT).

3325-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE TOWN OF RAYSIDE-BALFOUR (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS RECREATION DIVISION IN THE TOWN OF RAYSIDE-BALFOUR, SAVE AND EXCEPT ASSISTANT RECREATION MANAGER AND PERSONS ABOVE THE RANK OF ASSISTANT RECREATION MANAGER." (6 EMPLOYEES IN THE UNIT).

3328-72-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. L. J. S. CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF NIAGARA AND THE COUNTY OF HALDIMAND ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

3330-72-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. SWINGLINE OF CANADA LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, ONE SECRETARY EACH TO THE GENERAL MANAGER AND THE COMPTROLLER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (19 EMPLOYEES IN THE UNIT). (FOR PURPOSES OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT PERSONS IN THE CLASSIFICATION OF COMPUTER OPERATOR ARE INCLUDED IN THE BARGAINING UNIT).

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3332-72-R: THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL 736 (APPLICANT) V. K. H. PRESTON CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL REINFORCING RODMEN IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WELLINGTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

3334-72-R: CHATHAM CONSTRUCTION WORKERS ASSOCIATION, LOCAL NO. 53, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. AKA MECHANICAL CONTRACTING LIMITED (RESPONDENT).

UNIT: "ALL PLUMBERS AND PLUMBERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF ESSEX AND KENT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

3339-72-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 837 (APPLICANT) V. CRAFTWOOD CONST. CO. LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF NIAGARA AND THE COUNTY OF HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

3340-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. PUBLIC UTILITIES COMMISSION OF COBOURG (RESPONDENT).

UNIT: "ALL OFFICE EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT MANAGER AND PERSONS ABOVE THE RANK OF MANAGER." (6 EMPLOYEES IN THE UNIT).



3343-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE NIAGARA FRONTIER HUMANE SOCIETY (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT NIAGARA FALLS, SAVE AND EXCEPT MANAGER AND PERSONS ABOVE THE RANK OF MANAGER AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (7 EMPLOYEES IN THE UNIT).

3345-72-R: TEXTILE WORKERS UNION OF AMERICA, CLC, AFL-CIO (APPLICANT) V. VERSATILE KNITTING COMPANY (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT CORNWALL, SAVE AND EXCEPT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, STAFF MECHANICS, OFFICE, CLERICAL AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (57 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

3347-72-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS LOCAL UNION 721 (APPLICANT) V. LAMSON CONVEYOR LIMITED, DIVISION OF DIEBOLD OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF SIMCOE, THE DISTRICT OF MUSKOKA AND THE TOWNSHIPS OF RAMA, MARA AND THORAH IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

3354-72-R: MILK & BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES LOCAL 647 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. BROWN'S AUTOMATIC VENDING LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT KINGSTON, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND PERSONS COVERED BY A SUBSISTING CERTIFICATE BETWEEN THE PARTIES ISSUED BY THIS BOARD, DATED FEBRUARY 27, 1973." (8 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE SUBMISSIONS OF THE PARTIES).

3371-72-R: LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, S.E.I.U., A.F.L., C.I.O., C.L.C. (APPLICANT) V. MCKEGNEY & HARRIS LIMITED CARRYING ON BUSINESS AS DELAWARE NURSING HOME (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS NURSING HOME AT DELAWARE, SAVE AND EXCEPT REGISTERED NURSES, SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (34 EMPLOYEES IN THE UNIT).

3372-72-R: INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, AFL, CIO-CLC (APPLICANT) V. MACDONALD & SON (TIMMINS) LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT TIMMINS - PORCUPINE, SAVE AND EXCEPT SALES SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANKS OF SALES SUPERVISOR AND FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (5 EMPLOYEES IN THE UNIT).

3375-72-R: GENERAL TRUCK DRIVERS' UNION LOCAL 938 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. HANES TRANSPORT (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HUNTSVILLE, SAVE AND EXCEPT FOREMEN, DISPATCHERS, PERSONS ABOVE THE RANKS OF FOREMAN AND DISPATCHER, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (3 EMPLOYEES IN THE UNIT).

3377-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1089 (APPLICANT) V. CAPRI CONSTRUCTION (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF LAMBTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

3378-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL 1988 (APPLICANT) V. GORDON MULLIGAN CONST. LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF LANARK, THE TOWNSHIPS OF NORTH CROSBY, SOUTH CROSBY, SOUTH BURGESS, BASTARD, SOUTH ELMSLEY AND KITLEY IN THE COUNTY OF LEEDS AND THE TOWNSHIPS OF WOLFORD, OXFORD AND SOUTH GOWER IN THE COUNTY OF GRENVILLE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

3379-72-R: G C O EMPLOYEES ASSOCIATION (APPLICANT) V. GRANNY'S COUNTRY-OVEN BAKERY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT AURORA, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE AND CLERICAL STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK." (54 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

3380-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 93 (APPLICANT) V. BOWER CONST. LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

3381-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL UNION 1669 (APPLICANT) V. MATTAI INVESTMENTS LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF KENORA, INCLUDING THE PATRICIA PORTION, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

3388-72-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. OLIVER-MACLEOD LIMITED (RESPONDENT) V. EMPLOYEE (OBJECTOR).

UNIT #1: ALL EMPLOYEES OF THE RESPONDENT AT GRAVENHURST, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (22 EMPLOYEES IN THE UNIT).

UNIT #2: "ALL EMPLOYEES OF THE RESPONDENT AT GRAVENHURST REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (2 EMPLOYEES IN THE UNIT).

3395-72-R: CANADIAN TELEPHONE EMPLOYEES' ASSOCIATION (APPLICANT) V. TELONTARIO INCORPORATED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF MAIDSTONE, SAVE AND EXCEPT MANAGER AND PERSONS ABOVE THE RANK OF MANAGER." (5 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

3396-72-R: CANADIAN TELEPHONE EMPLOYEES' ASSOCIATION (APPLICANT) V. THE CARADOC EKFRID TELEPHONE COMPANY, LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF MIDDLESEX, SAVE AND EXCEPT MANAGER AND PERSONS ABOVE THE RANK OF MANAGER." (5 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

3403-72-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL 647 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. WESTON BAKERIES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS OSHAWA DEPOT, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, AND OFFICE STAFF." (3 EMPLOYEES IN THE UNIT).



3406-72-R: GENERAL TRUCK DRIVERS' UNION LOCAL 938 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. CHIPPERFIELD'S EXPRESS LIMITED (RESPONDENT) V. EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISOR AND PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE AND SALES STAFF." (15 EMPLOYEES IN THE UNIT).

3409-72-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL 141 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. E. J. WRIGHT CENTRAL LTD. (RESPONDENT) V. UNITED STEELWORKERS OF AMERICA (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT STRATHROY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (18 EMPLOYEES IN THE UNIT).

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3410-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. ONTARIO HUMANE SOCIETY (THE ONTARIO SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS) (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BARRIE, SAVE AND EXCEPT MANAGER AND PERSONS ABOVE THE RANK OF MANAGER." (8 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE SUBMISSIONS OF THE PARTIES).

3411-72-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. ARNOLD STEELE & ASSOCIATES LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WELLINGTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

3413-72-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. EILPRO HOLDINGS INC. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE FOREGOING).

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3422-72-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 493 (APPLICANT) V. J. V. MECHANICAL (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WITHIN A RADIUS OF THIRTY-FIVE MILES FROM THE CITY OF SUDBURY FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (9 EMPLOYEES IN THE UNIT).

3441-72-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. BEST-VIEW HOLDINGS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF SARNIA, SAVE AND EXCEPT REGISTERED NURSES, SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (39 EMPLOYEES IN THE UNIT).

3453-72-R: OPERATIVE PLASTERERS & CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES & CANADA, LOCAL UNION 124, OTTAWA, ONTARIO (APPLICANT) V. W. A. STEPHENSON CONSTRUCTION CO. LTD. (RESPONDENT).

UNIT: "ALL CEMENT MASONS AND CEMENT MASONS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

3468-72-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. STONE & WEBSTER CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF WENTWORTH, INCLUDING THE PART OF TOWNSHIP OF NORTH DUMFRIES ANNEXED FROM BEVERLY TOWNSHIP, THE TOWNSHIP OF NASSAGAWEYA AND THE TOWN OF BURLINGTON IN THE COUNTY OF HALTON, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (8 EMPLOYEES IN THE UNIT).

3470-72-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. SIMCOE MECHANICAL CONTRACTING LTD. (RESPONDENT).

UNIT: "ALL PLUMBERS AND PLUMBERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF LANARK, AND THE TOWNSHIPS OF SOUTH CROSBY, BASTARD, KITLEY, WOLFORD, OXFORD (ON RIDEAU) AND SOUTH GOWER AND ALL LANDS NORTH THEREOF IN THE UNITED COUNTIES OF LEEDS AND GRENVILLE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

3471-72-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. ARNOLD STEELE & ASSOCIATES LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS, CARPENTERS' APPRENTICES AND CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF SIMCOE, THE DISTRICT MUNICIPALITY OF MUSKOKA AND THE TOWNSHIP OF THORAH AND ALL LAND NORTH THEREOF IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

APPLICATIONS CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

3060-72-R: MARBLE MASONS TILE LAYERS AND TERPAZZO WORKERS UNION No. 31 (APPLICANT) V. SIROX PLASTERING CO. LTD. (RESPONDENT) V. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (INTERVENER #1) V. THE OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 117 (INTERVENER #2).

UNIT: "ALL PLASTERERS' AND PLASTERERS' APPRENTICES OF THE RESPONDENT EMPLOYED AT OR WORKING OUT OF METROPOLITAN TORONTO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (10 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	15
NUMBER OF PERSONS WHO CAST BALLOTS	9
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	8
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER #2	1

3068-72-R: MARBLE MASONS TILE LAYERS AND TERRAZZO WORKERS UNION No. 31 (APPLICANT) V. LIDO PLASTERING CO. LTD. (RESPONDENT) V. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (INTERVENER #1) V. THE OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 117 (INTERVENER #2).

UNIT: "ALL PLASTERERS' AND PLASTERERS' APPRENTICES OF THE RESPONDENT EMPLOYED AT OR WORKING OUT OF METROPOLITAN TORONTO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	4
NUMBER OF PERSONS WHO CAST BALLOTS	4
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	4
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER #2	0

3084-72-R: MARBLE MASONS TILE LAYERS AND TERRAZZO WORKERS, UNION No. 31 (APPLICANT) V. SPRING PLASTERING CO. LTD. (RESPONDENT) V. LABOURERS'



INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (INTERVENER #1) v. THE OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 117 (INTERVENER #2).

UNIT: "ALL PLASTERERS' AND PLASTERERS' APPRENTICES OF THE RESPONDENT EMPLOYED AT OR WORKING OUT OF METROPOLITAN TORONTO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (29 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		29
NUMBER OF PERSONS WHO CAST BALLOTS	27	
BALLOTS SEGREGATED AND NOT COUNTED	2	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	23	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF INTERVENER #2	2	

3096-72-R: MARBLE MASONS TILE LAYERS AND TERRAZZO WORKERS UNION No. 31 (APPLICANT) v. GLENBOW CONSTRUCTION LTD. (RESPONDENT) v. THE OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 117 (INTERVENER #1) v. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (INTERVENER #2).

UNIT: "ALL PLASTERERS' AND PLASTERERS' APPRENTICES OF THE RESPONDENT EMPLOYED AT OR WORKING OUT OF METROPOLITAN TORONTO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (26 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS'		
LIST		27
NUMBER OF PERSONS WHO CAST BALLOTS	27	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	21	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF INTERVENER #1	6	

3145-72-R: THE CANADIAN UNION OF OPERATING ENGINEERS, LOCAL 101 (APPLICANT) v. CANADA GLAZED PAPERS LIMITED (RESPONDENT) v. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 796 (INTERVENER).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED IN THE BOILER ROOM OF THE RESPONDENT AT SCARBOROUGH." (5 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		5
NUMBER OF PERSONS WHO CAST BALLOTS	4	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	4	
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	0	

3182-72-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. LIVINGSTON KENHAR LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BRAMPTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (65 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		67
NUMBER OF PERSONS WHO CAST BALLOTS	57	
NUMBER OF SPOILED BALLOTS	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	39	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	17	

3201-72-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL 647 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. WESTON BAKERIES LIMITED (RESPONDENT).

UNIT: "ALL ROUTE SALESMEN AND TRANSPORT DRIVERS IN THE EMPLOY OF THE RESPONDENT AT ESSEX AND CHATHAM, SAVE AND EXCEPT ROUTE SUPERVISORS AND PERSONS ABOVE THE RANK OF ROUTE SUPERVISOR." (25 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON PERSONS ON VOTERS' LIST		25
NUMBER OF PERSONS WHO CAST BALLOTS	24	
NUMBER OF SPOILED BALLOTS	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	22	
NUMBER OF BALLOTS MARKED IN FAVOUR OF THE EMPLOYEES' ASSOCIATION OF PHILPOTT'S BREAD & CAKES LIMITED	1	

3209-72-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. THE BEAVER FURNITURE COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT KITCHENER, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF,

INSTALLERS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND STUDENTS EMPLOYED ON AN ORIENTATION AND TRAINING BASIS IN CO-OPERATION WITH LOCAL VOCATIONAL SCHOOLS." (49 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR THE PURPOSES OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT DRAFTSMEN ARE EXCLUDED FROM THE BARGAINING UNIT UNDER THE CLASSIFICATION OF OFFICE STAFF.).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	42
NUMBER OF PERSONS WHO CAST BALLOTS	40
NUMBER OF SPOILED BALLOTS	1
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	21
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	18

3211-72-R: UNITED PAPERWORKERS INTERNATIONAL UNION (APPLICANT) V. THOMPSON PAPER BOX CO. LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (49 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	48
NUMBER OF PERSONS WHO CAST BALLOTS	44
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	35
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF THOMPSON PAPER BOX EMPLOYEES	
ASSOCIATION	9

3214-72-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) V. PERIMETER INDUSTRIES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF NORTH MONAGHAN, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF." (56 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	55
NUMBER OF PERSONS WHO CAST BALLOTS	52
NUMBER OF SPOILED BALLOTS	1
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	48
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	3



APPLICATIONS CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

2010-72-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPEPS LOCAL UNION No. 91 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. COMPAGNIE MIRON LTEE (RESPONDENT) V. UNITED CEMENT, LIME & GYPSUM WORKERS INTERNATIONAL UNION LOCAL 384 (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OTTAWA, SAVE AND EXCEPT DISPATCHER AND PERSONS ABOVE THE RANK OF DISPATCHER, OFFICE AND SALES STAFF." (4 EMPLOYEES IN THE UNIT).

NUMBER OF PERSON ON VOTER'S LIST	2
NUMBER OF PERSONS WHO CAST BALLOTS	2
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	2
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	0

2483-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. COMMERCIAL CATERERS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT #1: "ALL EMPLOYEES OF THE RESPONDENT AT 205 CUMMER AVENUE IN THE BOROUGH OF NORTH YORK, SAVE AND EXCEPT MANAGERS AND PERSONS ABOVE THE RANK OF MANAGER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (21 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	32
NUMBER OF PERSONS WHO CAST BALLOTS	26
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	26
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	0

UNIT #2: "ALL EMPLOYEES OF THE RESPONDENT AT 205 CUMMER AVENUE IN THE BOROUGH OF NORTH YORK REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, SAVE AND EXCEPT MANAGERS AND PERSONS ABOVE THE RANK OF MANAGER." (17 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	23
NUMBER OF PERSONS WHO CAST BALLOTS	21
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	16
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	5

2580-72-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) v. MACDONALDS CONSOLIDATED LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

- AND -

2598-72-R: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS UNION, LOCAL 419, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. MACDONALDS CONSOLIDATED LIMITED (RESPONDENT) v. RETAIL CLERKS INTERNATIONAL ASSOCIATION; RETAIL CLERKS UNION, LOCAL 206, CHARTERED BY THE RETAIL CLERKS INTERNATIONAL ASSOCIATION (INTERVENER) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF CANADA SAFEWAY LIMITED IN ITS MACDONALDS CONSOLIDATED LIMITED WAREHOUSE OPERATION AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN." (6 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	13
NUMBER OF PERSONS WHO CAST BALLOTS	13
NUMBER OF BALLOTS MARKED IN FAVOUR OF RETAIL CLERKS INTERNATIONAL ASSOCIATION	6
NUMBER OF BALLOTS MARKED IN FAVOUR OF WAREHOUSEMEN AND MISCELLANEOUS DRIVERS, LOCAL 419	7

2824-72-R: LABORERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 607 (APPLICANT) v. MACISAAC MINING & TUNNELLING COMPANY LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN MINE DEVELOPMENT, INCLUDING EXPLORATION, IN PARDEE TOWNSHIP, SAVE AND EXCEPT SHIFT BOSSES, FOREMEN, PERSONS ABOVE THE RANKS OF SHIFT BOSS AND FOREMAN, MASTER MECHANICS AND OFFICE STAFF." (15 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	15
NUMBER OF PERSONS WHO CAST BALLOTS	14
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	9
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	5

2978-72-R: BAKERY & CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA, LOCAL 264 (APPLICANT) v. LAURA SECORD LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT 1500 BIRCHMOUNT ROAD, SCARBOROUGH, ONTARIO, SAVE AND EXCEPT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, QUALITY CONTROL EMPLOYEES, OFFICE STAFF, PERSONS EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (691 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		539
NUMBER OF PERSONS WHO CAST BALLOTS	480	
NUMBER OF SPOILED BALLOTS	7	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	364	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	109	

3063-72-R: CANADIAN GUARDS ASSOCIATION (APPLICANT) V. THE INTERNATIONAL NICKEL COMPANY OF CANADA, LIMITED (RESPONDENT) V. UNITED STEELWORKERS OF AMERICA (INTERVENER) V. EMPLOYEES (OBJECTORS).

UNIT: "ALL SECURITY OFFICERS EMPLOYED BY THE RESPONDENT AT ITS OPERATIONS IN THE SUDBURY DISTRICT, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, INVESTIGATORS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (164 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		166
NUMBER OF PERSONS WHO CAST BALLOTS	162	
NUMBER OF SPOILED BALLOTS	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	92	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	69	

3110-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE YORK COUNTY ROMAN CATHOLIC SEPARATE SCHOOL BOARD (RESPONDENT) V. EMPLOYEES (OBJECTORS).

UNIT #2: "ALL EMPLOYEES OF THE RESPONDENT REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF." (4 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		4
NUMBER OF PERSONS WHO CAST BALLOTS	2	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	2	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	0	

(BARGAINING UNIT #1 - SEE BARGAINING UNITS CERTIFIED - NO VOTE CONDUCTED).



APPLICATIONS FOR CERTIFICATION DISMISSED DURING MARCH

NO VOTE CONDUCTED

2146-72-R: READY-MIX BUILDING SUPPLY, HYDRO & CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS, TEAMSTERS LOCAL UNION 230, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) v. NOR-PIPE CONSTRUCTION LIMITED (RESPONDENT) v. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (INTERVENER). (10 EMPLOYEES).

2314-72-R: THE TERRAZZO TILE AND MARBLE GUILD OF ONTARIO (APPLICANT) v. THE ONTARIO PROVINCIAL CONFERENCE MARBLE, TILE, TERRAZZO, CEMENT MASONS, RESILIENT FLOOR LAYERS AND THEIR HELPERS OF THE BRICKLAYERS, MASONS & PLASTERERS INTERNATIONAL UNION OF AMERICA (RESPONDENT) v. ELECTRICAL POWER SYSTEM CONSTRUCTION ASSOCIATION (INTERVENER). (NO EMPLOYEES).

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2359-72-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) v. CAYUGA MATERIALS & CONSTRUCTION CO. LIMITED (RESPONDENT) v. TEAMSTERS LOCAL UNION 879 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SIMCOE, SAVE AND EXCEPT DISPATCHERS, FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (7 EMPLOYEES).

2361-72-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) v. CAYUGA MATERIALS & CONSTRUCTION CO. LIMITED (RESPONDENT) v. TEAMSTERS LOCAL UNION 879 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (INTERVENER #1) v. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (INTERVENER #2). (121 EMPLOYEES).

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3045-72-R: LOCAL 666, UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA (APPLICANT) v. COMFORT GUARD SERVICE DIVISION OF ST. CATHARINES FUELS DIVISION OF THE CANADIAN FUEL MARKETERS GROUP LIMITED (RESPONDENT). (12 EMPLOYEES).

3087-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) v. K. H. PRESTON CONSTRUCTION LIMITED (RESPONDENT) v. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1081 (INTERVENER). (NO EMPLOYEES).

3121-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 527 (APPLICANT) V. WILFRED GRENIER CONSTRUCTION INCORPORATED (RESPONDENT). (2 EMPLOYEES).

3158-72-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION 721 (APPLICANT) V. JOHN T. HEPBURN, LIMITED (RESPONDENT) V. DRAFTSMEN'S ASSOCIATION OF ONTARIO, LOCAL 164, A. F. T. E. (INTERVENER #1) V. UNITED STEELWORKERS OF AMERICA (INTERVENER #2). (3 EMPLOYEES).

3275-72-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRON WORKERS, LOCAL 759 (APPLICANT) V. HEADWAY CORPORATION LIMITED (RESPONDENT). (2 EMPLOYEES).

3327-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. PICARD CONSTRUCTION ASSOCIATES LTD. (RESPONDENT). (4 EMPLOYEES).

3359-72-R: THE LONDON AMBULANCE ATTENDANTS ASSOCIATION (APPLICANT) V. THAMES VALLEY AMBULANCE LIMITED (RESPONDENT). (49 EMPLOYEES).

3402-72-R: KRAUS CARPET EMPLOYEES' ASSOCIATION (APPLICANT) V. WATERLOO SPINNING MILLS LIMITED (RESPONDENT). (86 EMPLOYEES).

3462-72-R: OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA LOCAL UNION 124 OTTAWA, ONTARIO (APPLICANT) V. JACQUES CORMIER (RESPONDENT). (2 EMPLOYEES).

#### CERTIFICATION DISMISSED SUBSEQUENT TO PRE-HEARING VOTE

3284-72-R: INTERNATIONAL MOLDERS & ALLIED WORKERS UNION (APPLICANT) V. DELHI METAL PRODUCTS LIMITED (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT DELHI, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (145 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		116
NUMBER OF PERSONS WHO CAST BALLOTS	109	
NUMBER OF SPOILED BALLOTS	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	31	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	77	

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

3103-72-R: GENERAL TRUCK DRIVERS' UNION LOCAL 938 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. E. S. F. LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT VOYAGEUR RESTAURANT, WAVERLY ROAD, BOWMANVILLE, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, THOSE PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (26 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	10
NUMBER OF PERSONS WHO CAST BALLOTS	10
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	1
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	9

3223-72-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. W. E. SAUNDERS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (20 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	16
NUMBER OF PERSONS WHO CAST BALLOTS	16
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	6
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	10

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING MARCH

2325-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. INDUSTRIAL MINES INSTALLATIONS LIMITED (RESPONDENT) V. UNITED STEELWORKERS OF AMERICA (INTERVENER). (9 EMPLOYEES).

3290-72-R: OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL UNION 124 OTTAWA, ONTARIO (APPLICANT) V. SEAWAY VALLEY PLASTERING LTD. (RESPONDENT). (3 EMPLOYEES).



3305-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. MOHAWK HOSPITAL SERVICES INC., LINEN SUPPLY & SERVICES DIVISION (RESPONDENT). (162 EMPLOYEES).

3324-72-R: TEAMSTERS LOCAL UNION NO. 879, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. KING PAVING & MATERIALS LIMITED, SUBSIDIARY OF THE FLINTKOTE COMPANY (RESPONDENT). (9 EMPLOYEES).

3370-72-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 772 A.F.L. C.I.O. C.L.C. (APPLICANT) V. RIVERSIDE POULTRY COMPANY LTD. (RESPONDENT). (4 EMPLOYEES).

3389-72-R: THE NEWSPAPER GUILD (APPLICANT) V. THE SUDBURY STAR (THOMSON NEWSPAPERS LIMITED) (RESPONDENT). (32 EMPLOYEES).

3394-72-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL 880 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. SASSO DISPOSAL LIMITED (RESPONDENT). (5 EMPLOYEES).

3442-72-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. E & E SEEGRILLER LIMITED (RESPONDENT). (29 EMPLOYEES).

#### APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED OF

##### DURING MARCH

2727-72-R: OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION, LOCAL 124 (APPLICANT) V. INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES, LOCAL UNION 1891; AND C. ROMANELLI DRYWALL LIMITED (RESPONDENTS) V. DURABLE DRYWALL LIMITED (INTERVENER). (4 EMPLOYEES). (DISMISSED).

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2752-72-R: STEVEN JOSEPH LAZUK (APPLICANT) V. RETAIL, WHOLESALE, HOTEL AND RESTAURANT EMPLOYEES UNION, LOCAL 448, A.F. of L., C.I.O., C.C.L. (RESPONDENT) V. WELLINGTON HOTEL HOLDINGS LIMITED (INTERVENER). (GRANTED).

UNIT: "ALL FULL-TIME AND PART-TIME EMPLOYEES OF THE WELLINGTON HOTEL HOLDINGS LIMITED WELLINGTON HOUSE AT LONDON IN THE LADIES' BEVERAGE ROOMS, MEN'S BEVERAGE ROOMS AND LOUNGES, SAVE AND EXCEPT MANAGER, PERSONS ABOVE THE RANK OF MANAGER, AND OFFICE STAFF." (81 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	12
NUMBER OF PERSONS WHO CAST BALLOTS	11
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	0
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	11

2761-72-R: JOAN ARRAND (APPLICANT) V. RETAIL, WHOLESALE, HOTEL AND RESTAURANT EMPLOYEES UNION, LOCAL 448, A.F. OF L., C.I.O., C.C.L. (RESPONDENT) V. W. BOLEN ENTERPRISES LIMITED (INTERVENER). (DISMISSED).

UNIT: "ALL EMPLOYEES OF THE INTERVENER IN ITS RIDOUT TAVERN AT LONDON, SAVE AND EXCEPT MANAGER, PERSONS ABOVE THE RANK OF MANAGER, AND OFFICE STAFF." (81 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	81
NUMBER OF PERSONS WHO CAST BALLOTS	62
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	39
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	23

3283-72-R: JEFFREY F. BAKERY (APPLICANT) V. INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, AFL-CIO-CLC (RESPONDENT). (5 EMPLOYEES). (WITHDRAWN).

3423-72-R: ROBERT METCALFE (APPLICANT) V. AMALGAMATED JEWELRY, AND ALLIED WORKERS UNION, LOCAL 33, I.J.W.U., TORONTO (RESPONDENT). (12 EMPLOYEES). (GRANTED).

#### APPLICATIONS FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF DURING

##### MARCH

3025-72-R: INTERNATIONAL CHEMICAL WORKERS UNION, LOCAL 798 (APPLICANT) V. INTERNATIONAL CHEMICAL WORKERS UNION, LOCAL 741 (RESPONDENT) V. UNION GAS LIMITED (EMPLOYER). (GRANTED).

3243-72-R: GRAND RIVER VALLEY DISTRICT COUNCIL UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. LOCAL UNIONS 498 BRANTFORD, 949 CAMBRIDGE (HESPELER) 1940 KITCHENER, 2173 GUELPH (RESPONDENT). (DISMISSED).

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3313-72-R: SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO, CLC (APPLICANT) V. THE CANADIAN NATIONAL INSTITUTE FOR THE BLIND (RESPONDENT) V. ONTARIO UNION OF BLIND AND SIGHTED MERCHANTS (PREDECESSOR TRADE UNION). (GRANTED).

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING

MARCH

2933-72-U: UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 16 (APPLICANT) v. JAMES HOWDEN AND PARSONS COMPANY OF CANADA, LIMITED AND WESTERN STRESS RELIEVING SERVICES INC. (RESPONDENTS). (DISMISSED).

3351-72-U: PETERBOROUGH FREIGHT LINES LIMITED (APPLICANT) v. VINCE MACPHERSON AND JAMES WILDE (RESPONDENTS). (WITHDRAWN).

3356-72-U: PERIMETER INDUSTRIES LIMITED (APPLICANT) v. SHIRLEY ARMOUR ET AL (RESPONDENTS). (WITHDRAWN).

3434-72-U: NATIONAL STEEL CAR CORPORATION LIMITED (APPLICANT) v. W. G. GROVER, J. RUTTEN, AND ALL OTHER RESPONDENTS NAMED IN SCHEDULE "A" ATTACHED HERETO (RESPONDENTS). (GRANTED).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING MARCH

3357-72-U: PERIMETER INDUSTRIES LIMITED (APPLICANT) v. SHIRLEY ARMOUR ET AL (RESPONDENTS). (WITHDRAWN).

3374-72-U: LOCAL 304, INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA AFL-CIO; CLC (APPLICANT) v. LABATT'S ONTARIO BREWERIES LIMITED (RESPONDENT). (GRANTED).

3385-72-U: LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, S.E.I.U., A.F.L., C.I.O., C.L.C. (APPLICANT) v. CORPORATION OF THE COUNTY OF ELGIN (RESPONDENT). (DISMISSED).

3448-72-U: CANADIAN FOOD AND ALLIED WORKERS, LOCAL UNION 633 CHARTERED BY THE AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL, CIO, CLC AND CANADIAN FOOD AND ALLIED WORKERS, LOCAL UNION 175 CHARTERED BY THE AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL, CIO, CLC (APPLICANTS) v. DARRIGO'S FOOD MARKETS ONT. LIMITED (RESPONDENT). (GRANTED).

APPLICATION FOR CONSENT TO PROSECUTE (HOSPITAL ARBITRATION ACT) DISPOSED

OF DURING MARCH

47-72-PH: LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 200, S.E.I.U., A.F.L., C.I.O., C.L.C. (APPLICANT) v. CORPORATION OF THE COUNTY OF ELGIN (RESPONDENT). (DISMISSED).



COMPLAINTS UNDER SECTION 79 (UNFAIR LABOUR PRACTICE) DISPOSED OF DURINGMARCH

2044-72-U: INTERNATIONAL LEATHER GOODS, PLASTICS & NOVELTY WORKERS' UNION, LOCAL 8 (COMPLAINANT) V. GIFTSON SALES (RESPONDENT). (GRANTED).

2688-72-U: NICK PAPAIOANNOU (COMPLAINANT) V. LOCAL 280 OF THE HOTEL & RESTAURANT EMPLOYEES' & BARTENDERS' INTERNATIONAL UNION (RESPONDENT). (DISMISSED).

2691-72-U: INTERNATIONAL CHEMICAL WORKERS UNION (COMPLAINANT) V. SINCLAIR & VALENTINE COMPANY OF CANADA LIMITED (RESPONDENT).

- AND -

2777-72-U: INTERNATIONAL CHEMICAL WORKERS UNION (COMPLAINANT) V. SINCLAIR & VALENTINE COMPANY OF CANADA LIMITED (RESPONDENT). (DISMISSED).

2969-72-U: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 2679 (COMPLAINANT) V. MAIN LUMBER COMPANY (RESPONDENT).

- AND -

3005-72-U: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 2679 (COMPLAINANT) V. MAIN LUMBER COMPANY (RESPONDENT). (DISMISSED).

3074-72-U: EVANGELOS TZAGADOURIS (COMPLAINANT) V. AMALGAMATED TRANSIT UNION (RESPONDENT). (DISMISSED).

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3078-72-U: RETAIL CLERKS INTERNATIONAL ASSOCIATION (COMPLAINANT) V. ZEHR'S MARKETS LIMITED (RESPONDENT). (DISMISSED).

3118-72-U: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (COMPLAINANT) V. HUGHES BOAT WORKS LIMITED (RESPONDENT). (WITHDRAWN).

3130-72-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. CANADIAN OXYGEN LIMITED (RESPONDENT). (DISMISSED).

3153-72-U: ROY W. THOMPSON (COMPLAINANT) V. MCFARLANE GENDRON CO. PLANT #2 (RESPONDENT). (DISMISSED).

3273-72-U: PETER E. CLEMENT (COMPLAINANT) V. PHILLIZ GAUTHIER (UNION REPRESENTATIVE, BELLEVILLE AREA FOR HOISTING ENGINEERS LOCAL 793) (RESPONDENT). (WITHDRAWN).

3318-72-U: MR. GUS WENDZICH (COMPLAINANT) V. RETAIL CLERKS LOCAL 486 (RESPONDENT). (WITHDRAWN).

3353-72-U: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (COMPLAINANT) V. PERIMETER INDUSTRIES LIMITED (RESPONDENT). (WITHDRAWN).

3365-72-U: GENERAL TRUCK DRIVERS' UNION LOCAL 938 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (COMPLAINANT) V. PETERBOROUGH FREIGHT LINES LIMITED (RESPONDENT). (WITHDRAWN).

3366-72-U: LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, S.E.I.U., A.F.L., C.I.O., C.L.C. (COMPLAINANT) V. KOMOKA NUPPING HOMES LIMITED (RESPONDENT). (WITHDRAWN).

3373-72-U: REGINALD CLAYTON CRANLEY (COMPLAINANT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 793, 205 CHURCH ST., TORONTO 2, ONTARIO (RESPONDENT). (WITHDRAWN).

3384-72-U: LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, S.E.I.U., A.F.L., C.I.O., C.L.C. (COMPLAINANT) V. CORPORATION OF THE COUNTY OF ELGIN AND ROBERT HIMPFEN (RESPONDENTS). (WITHDRAWN).

3405-72-U: UNITED INDUSTRIAL WORKERS LOC. 2A AFFILIATED WITH UNITED BRICK AND CLAY WORKERS OF AMERICA AFL-CIO (COMPLAINANT) V. PACIFIC PLATING LIMITED (RESPONDENT). (WITHDRAWN).

3432-72-U: MR. LAURENCE FOULDS (COMPLAINANT) V. MR. M. MARKOFF, PRESIDENT OF LOCAL #377, UNITED CEMENT LIME AND GYPSUM WORKERS INTERNATIONAL UNION (RESPONDENT). (WITHDRAWN).

3445-72-U: DOLORES PECCHIA (COMPLAINANT) V. MR. HIDERMAN (MANAGER) (RESPONDENT). (WITHDRAWN).

#### APPLICATION UNDER SECTION 39 DISPOSED OF DURING MARCH

3281-72-M: VERNON CHARLES EDWARDS (APPLICANT) V. CANADIAN UNION OF PUBLIC EMPLOYEES AND ITS LOCAL 1346 (RESPONDENT TRADE UNION) V. THE CORPORATION OF THE COUNTY OF PEEL (RESPONDENT EMPLOYER). (GRANTED).

#### APPLICATIONS UNDER SECTION 55 DISPOSED OF DURING MARCH

2621-72-R: THE UNITED GARMENT WORKERS OF AMERICA, LOCAL NO. 253 (APPLICANT) V. ABBEY CREST LIMITED (RESPONDENT) V. OUTDOOR OUTFITS LIMITED (INTERVENER). (DISMISSED).

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3419-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL UNION 93 (APPLICANT) V. SUNNYSIDE CONSTRUCTION AND L & G CONSTRUCTION LIMITED (RESPONDENTS). (WITHDRAWN).

APPLICATIONS UNDER SECTION 76 (FINANCIAL STATEMENT REQUESTED BY TRADE  
UNION MEMBER)

3331-72-M: GEORGE A. VAZSONYI, 2926 GRANDVIEW BLVD., WINDSOR, ONTARIO, CANADA (COMPLAINANT) V. CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL 1393, UNIVERSITY OF WINDSOR (RESPONDENT). (DISMISSED).

3361-72-M: BRYAN JOHN LUNT (COMPLAINANT) V. TEAMSTERS LOCAL UNION 647, MILK & BREAD DRIVERS AND DAIRY EMPLOYEES (RESPONDENT). (WITHDRAWN).

APPLICATIONS FOR DETERMINATION UNDER SECTION 95(2) DISPOSED OF DURING  
MARCH

2823-72-M: AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA LOCAL P486 (APPLICANT) V. T. SISMAN SHOW CO. LTD., AURORA (RESPONDENT). (WITHDRAWN).

2957-72-M: NATIONAL ASSOCIATION OF BROADCAST EMPLOYEES & TECHNICIANS (APPLICANT) V. ONTARIO EDUCATIONAL COMMUNICATIONS AUTHORITY (RESPONDENT). (WITHDRAWN).

3160-72-M: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE QUEENSWAY GENERAL HOSPITAL ASSOCIATION (RESPONDENT). (WITHDRAWN).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

1296-71-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL 786 (APPLICANT) V. SENTINEL RELIANCE PRODUCTS LIMITED (RESPONDENT) V. ONTARIO ERECTORS ASSOCIATION (PARTY ADDED BY THE BOARD) V. INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS (PARTY ADDED BY THE BOARD). (REQUEST DENIED).

2880-72-R: LUMBER AND SAWMILL WORKERS UNION LOCAL 2693 OF THE UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) V. LORENZO NADEAU (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (REQUEST DENIED).

3170-72-R: CSAO NATIONAL (INC.) (APPLICANT) V. THE GENERAL HOSPITAL OF PORT ARTHUR (RESPONDENT). (REQUEST DENIED).

3224-72-R: LOCAL UNION 278 INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA A.F.L., -C.I.O., C.L.C. (APPLICANT) V. CANADA DRY BOTTLING COMPANY (WINDSOR) LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (REQUEST DENIED).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - CONSENT TO PROSECUTE  
(HOSPITAL ARBITRATION ACT)

46-72-PH: CANADIAN UNION OF GENERAL EMPLOYEES (APPLICANT) V. THE TORONTO WESTERN HOSPITAL (RESPONDENT). (REQUEST DENIED).



STATISTICAL TABLES - FISCAL YEAR 1972-73

TABLE I

APPLICATIONS AND COMPLAINTS FILED WITH THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER FILED		
	<u>4TH QUARTER</u> <u>1972-73</u>	<u>3 MONTHS OF</u> <u>1972-73</u>	<u>FISCAL YEAR</u> <u>1971-72</u>
I. CERTIFICATION	305	1136	978
II. DECLARATION TERMINATING BARGAINING RIGHTS	7	56	72
III. DECLARATION OF SUCCESSOR STATUS	36	57	23
IV. DECLARATION THAT STRIKE UNLAWFUL	13	46	44
V. DECLARATION THAT LOCK-OUT UNLAWFUL	1	3	1
VI. CONSENT TO PROSECUTE	24	102	171
VII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 79)	71	241	193
VIII. MISCELLANEOUS	<u>21</u>	<u>129</u>	<u>122</u>
TOTAL	478	1770	1604
	<u>==</u>	<u>==</u>	<u>==</u>

TABLE II

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER		
	<u>4TH QUARTER</u> <u>1972-73</u>	<u>3 MONTHS OF</u> <u>1972-73</u>	<u>FISCAL YEAR</u> <u>1971-72</u>
HEARINGS AND CONTINUATION OF HEARINGS BY THE BOARD	336	1175	1040

TABLE III

APPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS  
BOARD BY MAJOR TYPES

	NUMBER DISPOSED OF		
	<u>4TH QUARTER</u> <u>1972-73</u>	<u>3 MONTHS OF</u> <u>1972-73</u>	<u>FISCAL YEAR</u> <u>1971-72</u>
I. CERTIFICATION	322	1132	943
II. DECLARATION TERMINATING BARGAINING RIGHTS	12	56	67
III. DECLARATION OF SUCCESSOR STATUS	7	20	7
IV. DECLARATION OF STRIKE UNLAWFUL	11	37	42
V. DECLARATION THAT LOCK-OUT UNLAWFUL	1	3	3
VI. CONSENT TO PROSECUTE	14	128	172
VII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 79)	51	226	150
VIII. MISCELLANEOUS	<u>17</u>	<u>111</u>	<u>146</u>
TOTAL	435	1713	1530
	<u>==</u>	<u>==</u>	<u>==</u>

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD  
BY TYPE AND DISPOSITION

	NUMBER OF APPLICATIONS			NUMBER OF EMPLOYEES*		
	4TH QTR 3 MTHS OF FISCAL YEAR			4TH QTR 3 MTHS OF FISCAL YEAR		
	<u>1972-73</u>	<u>1972-73</u>	<u>1971-72</u>	<u>1972-73</u>	<u>1972-73</u>	<u>1971-72</u>
<b>I. <u>CERTIFICATION</u></b>						
GRANTED	241	784	556	7982	24966	16433
DISMISSED	62	239	274	2266	12448	12105
WITHDRAWN	<u>19</u>	<u>109</u>	<u>113</u>	<u>519</u>	<u>2990</u>	<u>2211</u>
TOTAL	322	1132	943	10767	40404	30749
	<u>==</u>	<u>==</u>	<u>==</u>	<u>==</u>	<u>==</u>	<u>==</u>
<b>II. <u>TERMINATION</u> <u>OF BARGAINING</u> <u>RIGHTS</u></b>						
GRANTED	5	27	32	138	595	2226
DISMISSED	6	22	25	503	751	702
WITHDRAWN	<u>1</u>	<u>7</u>	<u>10</u>	<u>5</u>	<u>127</u>	<u>549</u>
TOTAL	12	56	67	646	1473	3477
	<u>==</u>	<u>==</u>	<u>==</u>	<u>==</u>	<u>==</u>	<u>==</u>

\*THESE FIGURES REFER TO THE NUMBER OF EMPLOYEES DIRECTLY AFFECTED AND ARE BASED ON THE NUMBER OF EMPLOYEES IN THE BARGAINING UNITS AT THE TIME THE APPLICATIONS FOR CERTIFICATION WERE FILED WITH THE BOARD. TOTALS FOR APPLICATIONS DISMISSED AND WITHDRAWN ARE APPROXIMATE.



TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD  
BY TYPE AND DISPOSITION (CONTINUED)

		NUMBER OF APPLICATIONS		
		4TH QTR	3 MTHS OF FISCAL YEAR	
		1972-73	1972-73	1971-72
III.	<u>DECLARATION THAT STRIKE</u>			
	<u>UNLAWFUL</u>			
	GRANTED	1	6	9
	DISMISSED	1	6	4
	WITHDRAWN	<u>9</u>	<u>25</u>	<u>31</u>
	TOTAL	11	37	44
		=	=	=
IV.	<u>DECLARATION THAT LOCK-OUT</u>			
	<u>UNLAWFUL</u>			
	GRANTED	-	-	-
	DISMISSED	1	2	2
	WITHDRAWN	<u>-</u>	<u>1</u>	<u>-</u>
	TOTAL	1	3	2
		=	=	=
V.	<u>CONSENT TO PROSECUTE</u>			
	GRANTED	5	20	31
	DISMISSED	3	35	67
	WITHDRAWN	<u>6</u>	<u>73</u>	<u>74</u>
	TOTAL	14	128	172
		=	=	=
VI.	<u>COMPLAINT OF UNFAIR</u>			
	<u>PRACTICE IN EMPLOYMENT</u>			
	<u>(SECTION 79)</u>			
	GRANTED	4	17	19
	DISMISSED	20	87	36
	WITHDRAWN	<u>27</u>	<u>122</u>	<u>95</u>
	TOTAL	51	226	150
		=	=	=

TABLE V

REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED OF  
BY THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	4TH QTR 1972-73	3 MTHS OF 1972-73	FISCAL YEAR 1971-72
<u>CERTIFICATION AFTER VOTE*</u>			
PRE-HEARING VOTE	19	47	34
POST-HEARING VOTE	21	75	59
BALLOTS NOT COUNTED	-	2	1
 <u>DISMISSED AFTER VOTE</u>			
PRE-HEARING VOTE	7	36	37
POST-HEARING VOTE	15	57	59
BALLOTS NOT COUNTED	<u>1</u>	<u>4</u>	<u>3</u>
TOTAL	63	221	193
	<u>=</u>	<u>=</u>	<u>=</u>

\*INCLUDES APPLICANT-INTERVENER APPLICATIONS IN WHICH BOTH APPLICANT AND INTERVENER APPLY FOR A NEW UNIT AND EITHER APPLICANT OR INTERVENER IS CERTIFIED.

TABLE VI

REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF  
BY THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	4TH QTR 1972-73	3 MTHS OF 1972-73	FISCAL YEAR 1971-72
*RESPONDENT UNION SUCCESSFUL	2	3	1
RESPONDENT UNION UNSUCCESSFUL	<u>3</u>	<u>13</u>	<u>21</u>
TOTAL	5	16	22
	<u>=</u>	<u>=</u>	<u>=</u>

\*IN TERMINATION PROCEEDINGS WHERE A VOTE IS TAKEN THE APPLICANT IS A GROUP OF EMPLOYEES OR THE EMPLOYER; THE INCUMBENT UNION IS THUS THE RESPONDENT.

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# *Monthly Report*

ONTARIO LABOUR RELATIONS BOARD





ONTARIO LABOUR RELATIONS BOARD REPORTS

A MONTHLY SERIES OF DECISIONS FROM THE

ONTARIO LABOUR RELATIONS BOARD

CITED [1973] OLRB REP.





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# ERRATUM

ON PAGE 54 OF "COMPLAINTS UNDER SECTION 79 (UNFAIR LABOUR PRACTICE DISPOSED OF DURING FEBRUARY" IN THE FEBRUARY 1973 REPORT REMOVE:

3283-72-U: JEFFREY F. BAKER (COMPLAINANT) v. INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, AFL-CIO-CLC (RESPONDENT). (WITHDRAWN).



2490-72-U: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC  
(COMPLAINANT) v. EMPIRE PUBLIC HOUSE (RESPONDENT).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS P. J. O'KEEFFE AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: H. BUCHANAN AND D. COLLINS FOR THE COMPLAINANT; L. R. SOSKIN FOR THE RESPONDENT.

DECISION OF THE BOARD: APRIL 2, 1973.

1. SUBSEQUENT TO THE HEARING OF THE COMPLAINT IN THIS MATTER, THE MAJORITY OF THE BOARD, PURSUANT TO ITS DECISION DATED DECEMBER 7, 1972, MADE THE FOLLOWING DETERMINATION:

"15. WE ACCORDINGLY FIND THAT THE COMPLAINANT HAS MET THE ONUS UPON IT AND HAS PROVED THAT WILLIAM COCHRANE WAS DISCHARGED BY THE RESPONDENT ON AUGUST 25, 1972, CONTRARY TO THE PROVISIONS OF SECTION 58 OF THE LABOUR RELATIONS ACT.

16. THE BOARD THEREFORE DIRECTS THAT THE RESPONDENT FORTHWITH REINSTATE WILLIAM COCHRANE IN THE SAME POSITION OR A LIKE POSITION AS HE HELD ON THE DATE OF HIS DISCHARGE.

17. THE BOARD FURTHER DIRECTS THAT THE RESPONDENT PAY TO WILLIAM COCHRANE AS COMPENSATION FOR LOSS OF EARNINGS SUSTAINED BY HIM THE SUM OF \$324.00.

18. THE BOARD DIRECTS THAT THE PARTIES MEET FORTHWITH WITH A VIEW TO AGREEING ON THE AMOUNT OF LOSS OF EARNINGS, IF ANY, THAT WILLIAM COCHRANE SUSTAINED BETWEEN NOVEMBER 13, 1972 (THE DATE OF THIS HEARING) AND THE DATE OF HIS REINSTATEMENT BY THE RESPONDENT WHICH SHALL THEN BE PAID HIM. IN DEFAULT OF AN AGREEMENT OF THE PARTIES ON THE AMOUNT ABOVE REFERRED TO WITHIN 14 DAYS AFTER THE RELEASE OF THIS DECISION OR WITHIN SUCH FURTHER PERIOD AS THE PARTIES MAY MUTUALLY AGREE UPON, AT THE REQUEST OF EITHER PARTY, THE BOARD WILL HOLD A FURTHER HEARING AT WHICH THE PARTIES WILL HAVE THE OPPORTUNITY TO PRESENT EVIDENCE AND MAKE REPRESENTATIONS AS TO THE ADDITIONAL AMOUNT TO BE PAID TO WILLIAM COCHRANE."

2. THE EVIDENCE DISCLOSES THAT FOLLOWING THE RELEASE OF THE BOARD'S DECISION, THE AGGRIEVED PERSON, WILLIAM COCHRANE, IN THE COMPANY OF THE COMPLAINANT'S BUSINESS AGENT, P. KOLBASKA, REACHED AGREEMENT WITH THE RESPONDENT'S COUNSEL TO THE EFFECT THAT COCHRANE WOULD BE ENTITLED TO CAST

A BALLOT IN THE VOTE PROCEEDINGS DIRECTED BY ANOTHER DIVISION OF THIS BOARD CONCERNING AN APPLICATION FOR CERTIFICATION FILED BY THE COMPLAINANT HEREIN (BOARD FILE No. 2455-72-R), WHICH WAS TO BE TAKEN ON THURSDAY, DECEMBER 14, 1972. IN THIS REGARD, LARRY SOSKIN, THE PART OWNER OF THE RESPONDENT, TESTIFIED THAT HE HAD INSTRUCTED HIS LAWYER TO MAKE ARRANGEMENTS WITH THE COMPLAINANT REGARDING COCHRANE'S REINSTATEMENT TO WORK FOR FRIDAY, DECEMBER 15, 1972 AT 11:30 A.M., AS WELL AS ARRANGING AN APPOINTMENT WITH THE COMPLAINANT TO DETERMINE COCHRANE'S LOSS OF WAGES FROM NOVEMBER 13 TO DECEMBER 15.

3. ON DECEMBER 14, 1972, COCHRANE DID PRESENT HIMSELF AT THE VOTE WHICH WAS BEING CONDUCTED UPON THE RESPONDENT'S PREMISES, AND AS AGREED, HE WAS PERMITTED TO VOTE. FOLLOWING CERTAIN DISCUSSIONS WITH SOSKIN WHO AT THE TIME WAS ACTING AS SCRUTINEER, COCHRANE WAS HANDED A CHEQUE IN THE AMOUNT OF \$324.00. THE EVIDENCE IS NOT CLEAR AS TO WHETHER COCHRANE WAS SPECIFICALLY ADVISED BY THE RESPONDENT OF THE ACTUAL TIME TO REPORT FOR WORK THE NEXT DAY. AT APPROXIMATELY 2:00 P.M., ON DECEMBER 15, 1972, COCHRANE'S TESTIMONY IS THAT HE RECEIVED A PHONE CALL FROM KOLBASKA ENQUIRING AS TO WHY HE HAD NOT REPORTED IN FOR WORK THAT MORNING. ACCORDING TO COCHRANE, THIS WAS THE FIRST TIME HE HAD BECOME AWARE OF THE FACT THAT HE HAD BEEN SCHEDULED TO REPORT INTO WORK FOR 11:30 A.M. AND NOT FOR 3:00 P.M. AS HE HAD ASSUMED. UPON PHONING THE HOTEL, COCHRANE WAS THEN INFORMED THAT HIS JOB HAD NOW BEEN FILLED.

4. BY LETTER DATED DECEMBER 18, 1972, LARRY SOSKIN, ON BEHALF OF THE RESPONDENT, ADVISED COCHRANE AS FOLLOWS:

"IN ACCORDANCE WITH THE ORDER OF THE ONTARIO LABOUR RELATIONS BOARD DATED DECEMBER 7/72 YOU WERE INFORMED TO REPORT FOR WORK @ 11.30 A.M. FRIDAY, DEC 15/72; AND YOU FAILED TO SHOW UP FOR YOUR SHIFT EITHER ON FRIDAY OR SAT.

AS A RESULT OF YOUR FAILURE TO SHOW UP FOR WORK, I WISH TO ADVISE YOU THAT YOUR EMPLOYMENT WITH US IS TERMINATED FORTHWITH.

A COPY OF THIS LETTER IS BEING SENT TO MR. P. KOLBASKA YOUR UNION REPRESENTATIVE WHO HAS ACTED ON YOUR BEHALF THROUGHOUT THE PROCEEDINGS BEFORE THE LABOUR RELATIONS BOARD.

YOURS VERY TRULY,"

5. LARRY SOSKIN'S EVIDENCE IN THIS REGARD IS THAT HE PERSONALLY DELIVERED THE ABOVE LETTER TO COCHRANE'S HOME ON DECEMBER 18, 1972, AT WHICH TIME COCHRANE EXPRESSED HIS APPRECIATION FOR RECEIPT OF THE \$324.00

CHEQUE. HE ALSO INDICATED TO SOSKIN THAT HE HOPED THAT THERE WERE NOW NO BAD FEELINGS BETWEEN THEM AND THAT HE HAD NOT SHOWN UP FOR WORK BECAUSE THE SITUATION "WAS EMBARRASSING FOR ALL CONCERNED" AND THAT IT WAS FOR THIS REASON THAT HE DID NOT WISH TO RETURN TO WORK. IT WOULD APPEAR THAT AT THIS TIME, COCHRANE HAD SECURED OTHER GAINFUL EMPLOYMENT. ACCORDING TO LARRY SOSKIN, COCHRANE HAD TELEPHONED HIM ON TWO SUBSEQUENT OCCASIONS AND INDICATED THAT HE DID NOT WISH TO PURSUE THE MATTER OF ADDITIONAL COMPENSATION ANY FURTHER. ON ONE OF THESE OCCASIONS, SOSKIN STATED THAT COCHRANE HAD ASKED HIM "WHY THE UNION WAS STILL AFTER HIM TO PURSUE THE MATTER, WHEN HE (COCHRANE) WISHED TO DROP IT?" ACCORDINGLY, SOSKIN ADVISED COCHRANE THAT "IF HE (COCHRANE) WAS REALLY SATISFIED WITH THINGS AS THEY TURNED OUT, THEN TO CALL MY LAWYER AND SEE IF HE COULD ARRANGE A RELEASE AND SO HAVE THE MATTER DROPPED."

6. PATRICIA MARK, A SECRETARY WITH THE FIRM OF LAWYERS RETAINED BY THE RESPONDENT, TESTIFIED THAT SHE RECEIVED A PHONE CALL FROM COCHRANE ON JANUARY 19, 1973 WHO INFORMED HER THAT HE UNDERSTOOD THAT "THE UNION IS STILL ON LARRY'S BACK." UPON INDICATING THAT HE WAS SATISFIED WITH THE SITUATION, COCHRANE THEN ASKED HER IF "THERE WAS ANY SORT OF PAPER, DOCUMENT OR RELEASE, THAT HE COULD SIGN TO HELP LARRY OUT." THE WITNESS WHO HAD BEEN ADVISED BEFOREHAND BY LARRY SOSKIN TO EXPECT SUCH A CALL, AFTER CONCLUDING HER DISCUSSION WITH COCHRANE, OBTAINED THE TERMS OF THE RELEASE FROM ONE OF THE FIRMS' SOLICITORS, WHICH SHE THEN PROCEEDED TO DICTATE TO LARRY SOSKIN OVER THE TELEPHONE.

7. ON JANUARY 22, 1973, COCHRANE AT THE REQUEST OF LARRY SOSKIN, ATTENDED THE PREMISES OF THE RESPONDENT, WHEREUPON HE EXECUTED A DOCUMENT WHICH PROVIDED AS FOLLOWS:

"JAN 22/73

I WILLIAM COCHRANE HEREBY RELEASE AND FOREVER DISCHARGE THE EMPIRE PUBLIC HOUSE FROM ALL CLAIMS AND DEMANDS WHATSOEVER ARISING UP TO THIS DATE INCLUDING ANY CLAIMS FOR BACK WAGES.

SIGNED, SEALED & DELIVERED

IN THE PRESENCE OF

SIGNATURE

DOUG HOPPS

SIGNATURE

WM. COCHRANE

SEAL

8. ON JANUARY 26, 1973, COPIES OF THIS DOCUMENT WERE FORWARDED TO THE COMPLAINANT AND ALSO TO THE BOARD. BY LETTER DATED JANUARY 31, 1973, THE COMPLAINANT CHALLENGED THE PROPRIETY OF THIS DOCUMENT ALLEGING



THAT LARRY SOSKIN "MISLED COCHRANE, AND COCHRANE IS PREPARED TO TESTIFY TO THAT EFFECT AT THE HEARING." WHEN NOTICE OF THIS ALLEGATION CAME TO THE ATTENTION OF LARRY SOSKIN, HE STATED THAT HE APPROACHED COCHRANE EARLY IN FEBRUARY AND THAT COCHRANE HAD AGREED TO SIGN A STATUTORY DECLARATION TO THE EFFECT THAT LARRY SOSKIN HAD NOT MISLED HIM AT THE TIME OF THE SIGNING OF THE "RELEASE" DOCUMENT. HOWEVER, AT THIS POINT, IT WOULD APPEAR THAT COCHRANE THEN SOUGHT OUT THE ADVICE OF THE COMPLAINANT AND WAS ACCORDINGLY INSTRUCTED NOT TO SIGN ANY FURTHER DOCUMENTS. THE COMPLAINANT IN THESE PROCEEDINGS NOW SEEKS COMPENSATION ON BEHALF OF COCHRANE FOR THE LOSS OF EARNINGS SUSTAINED DURING THE PERIOD BETWEEN NOVEMBER 13 AND DECEMBER 15, 1972, PURSUANT TO THE DIRECTION AS SET OUT IN PARAGRAPH 18 OF THE BOARD'S DECISION IN THIS MATTER DATED DECEMBER 7, 1972.

9. HAVING CAREFULLY REVIEWED THE TOTALITY OF THE EVIDENCE AS ADDUCED AT THE SUBSEQUENT HEARING OF THIS MATTER ON MARCH 9, 1973, WE ARE SATISFIED THAT COCHRANE WAS NOT MISLED BY THE RESPONDENT IN SIGNING THE "RELEASE" DOCUMENT REFERRED TO IN PARAGRAPH #7 HEREIN, NOR DO WE FIND THAT THE RESPONDENT EXERCISED UNDUE INFLUENCE IN THIS REGARD. WE FURTHER FIND THAT COCHRANE, AT ALL RELEVANT TIMES, WAS FULLY AWARE THAT THE CONSEQUENCES OF HIS ACTIONS IN THIS RESPECT WOULD RESULT IN A COMPLETE SETTLEMENT OF ANY CLAIMS HE MAY HAVE HAD AGAINST THE RESPONDENT.

10. HAVING EXERCISED HIS OWN FREE WILL IN ARRIVING AT HIS DECISION TO SIGN THE "RELEASE" DOCUMENT, WE ARE NOT PREPARED TO SPECULATE UPON THE REASONS FOR THE AGGRIEVED PERSON'S SUBSEQUENT "CHANGE OF HEART" IN THIS REGARD. TO PERMIT COCHRANE TO, IN EFFECT, NOW UNILATERALLY REPUDIATE THE AGREEMENT AS EVIDENCED IN THE "RELEASE" DOCUMENT IN THESE CIRCUMSTANCES, WOULD HAVE THE EFFECT OF MAKING PROCEEDINGS BEFORE THIS BOARD INTERMINABLE AND INCONCLUSIVE, AND NOT CONDUCTIVE TO THE BEST INTERESTS OF LABOUR RELATIONS. (SEE THE UNIVERSITY OF WINDSOR CASE [1971] OLRB REP. P. 344; THE BELCOURT CONSTRUCTION (OTTAWA) CASE OLRB M.R. DECEMBER 1970, P. 944; CONTINENTAL CAN COMPANY OF CANADA LIMITED CASE [1971] OLRB REP., P. 269)

11. IN THE RESULT, THE BOARD FINDS THAT COCHRANE IS NOT ENTITLED TO ANY FURTHER COMPENSATION AND PROCEEDINGS IN THIS REGARD ARE ACCORDINGLY DISMISSED.

2930-72-U: MOHAMED SALAH GUINDEHI (COMPLAINANT) V. UNITED STEELWORKERS OF AMERICA LOCAL UNION NO. 7608 (RESPONDENT).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND P. J. O'KEEFFE.

APPEARANCES AT THE HEARING: C. J. ABBASS AND MOHAMED SALAH GUINDEHI FOR THE COMPLAINANT; PETER G. KENNEDY, JACK COVE AND CECIL GRAHAM FOR THE RESPONDENT.

DECISION OF THE BOARD:

APRIL 2, 1973.

1. THIS IS A COMPLAINT FILED UNDER THE PROVISIONS OF SECTION 79 OF THE LABOUR RELATIONS ACT WHEREIN THE COMPLAINANT ALLEGES THAT THE RESPONDENT, IN FAILING TO PROCESS HIS DISCHARGE GRIEVANCE THROUGH TO ARBITRATION PURSUANT TO THE PROCEDURE AS ESTABLISHED IN THE COLLECTIVE AGREEMENT ENTERED INTO BETWEEN INDUSTRIAL WIRE AND CABLE (1970) LTD. (HEREINAFTER REFERRED TO AS THE COMPANY) AND THE RESPONDENT, CONTRAVENED THE PROVISIONS OF SECTION 60 OF THE SAID ACT.

2. THE COMPLAINANT IN THIS MATTER WAS HIRED BY THE COMPANY ON AUGUST 27, 1971. HE HOLDS A BACHELOR OF SCIENCE DEGREE IN MECHANICAL ENGINEERING FROM ALEXANDRA UNIVERSITY IN EGYPT AND HAS DONE POST-GRADUATE WORK AT THE UNIVERSITY OF LONDON. HE ALSO HOLDS A MASTER'S DEGREE IN AERONAUTICAL ENGINEERING FROM THE UNIVERSITY OF MICHIGAN AND HAS BEEN ENROLLED IN THE ASSOCIATION OF PROFESSIONAL ENGINEERS AS A GRADUATE ENGINEER IN TRAINING. THIS WAS THE CLASSIFICATION UNDER WHICH GUINDEHI CLAIMED THAT HE HAD BEEN HIRED BY THE COMPANY. THE DUTIES OF THIS CLASSIFICATION WERE DEFINED TO HIM BY MR. DAVIS THE COMPANY'S PROCESS ENGINEER AND INVOLVED SPECIFIC ROTATIONAL ASSIGNMENTS THROUGHOUT THE PLANT. HAVING REGARD TO ALL OF THE EVIDENCE AS ADDUCED, WE FIND HOWEVER THAT AT ALL MATERIAL TIMES TO THIS COMPLAINT, GUINDEHI WAS ENGAGED AS A LACQUER OPERATOR, A CLASSIFICATION SPECIFICALLY COVERED IN THE COLLECTIVE AGREEMENT. WE ALSO FIND THAT GUINDEHI WAS GENERALLY TREATED BY THE COMPANY IN THE SAME MANNER AS ANY OTHER MEMBER OF THE BARGAINING UNIT AND THAT UPON AT LEAST ONE OCCASION HE HAD BEEN DISCIPLINED FOR ALLEGED INSUBORDINATION BY J. HUNWICKS, THE PLANT SUPERVISOR. MUCH OF GUINDEHI'S PROBLEMS IN THIS REGARD STEMMED FROM HIS INSISTENCE UPON WEARING A TIE DESPITE WARNINGS THAT THIS PRACTICE WOULD CONSTITUTE A SAFETY HAZARD IN THE PLANT. AT NO TIME DURING THE EARLY STAGES OF HIS EMPLOYMENT DID THE COMPLAINANT SEEK OUT THE ASSISTANCE OF THE RESPONDENT NOR DID HE ATTEMPT TO SOCIALIZE WITH THE OTHER HOURLY RATED EMPLOYEES. ALSO, HE HAD MADE IT QUITE PLAIN THAT HE WOULD NOT PARTICIPATE IN ANY STRIKE ACTION WHICH WAS BEING CONTEMPLATED AT THE TIME. DESPITE HIS STRONG OBJECTIONS, THE COMPANY CONTINUED TO DEDUCT THE "RAND FORMULA" TYPE OF CHECK-OFF FROM HIS CHEQUE. GUINDEHI'S POSITION WITH THE COMPANY IS FURTHER COMPLICATED BY ALLEGATIONS THAT THE PLANT MANAGER (NOW DECEASED) HAD PROMISED HIM A FOREMAN'S JOB UPON COMPLETION OF HIS TRAINING. IT SHOULD BE NOTED AT THIS POINT THAT THE BOARD, IN REACHING ITS FINDINGS, IS LIMITED TO THE EVIDENCE AS PRESENTED AND WAS HAMPERED TO SOME EXTENT BY THE LACK OF ANY TESTIMONY FROM THE COMPANY CONCERNING CERTAIN MATTERS WITHIN ITS EXCLUSIVE KNOWLEDGE. HOWEVER, ALTHOUGH NOTIFIED OF THESE PROCEEDINGS, THE COMPANY FAILED TO APPEAR.

3. ON JUNE 1, 1972, GUINDEHI INJURED HIS BACK WHILE ATTEMPTING TO MOVE CERTAIN HEAVY WEIGHTS IN THE PLANT. UPON REPORTING THE INJURY TO B. BASSETT, THE PERSONNEL MANAGER, HE WAS REFERRED TO A DR. MCCLEAN, A CHIROPRACTOR, FOR TREATMENT. ALTHOUGH THE LATTER'S RESULTANT REPORT WAS NOT FILED WITH THE BOARD AS AN EXHIBIT, IT WOULD APPEAR THAT IT REVEALED SOME PERMANENT IMPAIRMENT TO GUINDEHI'S BACK PREDATING THE TIME OF HIS EMPLOYMENT WITH THE COMPANY. IT WAS APPARENTLY ON THE BASIS OF THIS REPORT THAT GUINDEHI WAS DISCHARGED BY THE COMPANY ON JUNE 15, 1972.

BY LETTER DATED JUNE 18, THE COMPLAINANT WROTE BASSETT REQUESTING, INTER ALIA, THAT HE BE SUPPLIED WITH WRITTEN REASONS FOR HIS DISCHARGE. UPON RECEIVING NO RESPONSE TO THIS LETTER HE ATTENDED BEFORE W. LONGRIDGE, A STAFF REPRESENTATIVE WITH THE RESPONDENT, WHERE HE SIGNED A GRIEVANCE ALLEGING IMPROPER DISCHARGE AND CLAIMING REINSTATEMENT TOGETHER WITH COMPENSATION FOR LOSS OF WAGES ACCRUED. BY LETTER DATED JUNE 23, BASSETT INFORMED GUINDEHI THAT IT WAS NOT NECESSARY FOR THE COMPANY TO GIVE HIM WRITTEN NOTICE. BY LETTER DATED JUNE 28, GUINDEHI ADVISED BASSETT THAT ARTICLE 18(c) OF THE COLLECTIVE AGREEMENT REQUIRED THE COMPANY TO PROVIDE TO ANY TERMINATED EMPLOYEE A WRITTEN REASON FOR HIS DISCHARGE PRIOR TO HIS LEAVING THE PLANT.

4. ON JUNE 30, GUINDEHI MET WITH THE UNION COMMITTEE AT THE PLANT WHEREIN IT WAS DECIDED THAT A GRIEVANCE MEETING WOULD BE ARRANGED WITH THE COMPANY PROVIDED GUINDEHI COULD SUPPLY A DOCTOR'S CERTIFICATE CONTRADICTING THE POSITION TAKEN BY THE CHIROPRACTOR IN HIS REPORT. GUINDEHI SUBSEQUENTLY DELIVERED TO THE COMMITTEE A LETTER FROM A DR. TALAAT DATED JULY 10. ARMED WITH THIS LETTER, WHICH IS RATHER GENERALLY WORDED BUT NEVERTHELESS APPARENTLY SUFFICIENT FOR THE RESPONDENT'S PURPOSES, A MEETING WAS ARRANGED WITH THE COMPANY FOR JULY 19, AT WHICH TIME GUINDEHI'S GRIEVANCE WAS DISCUSSED. WHILE THE COMMITTEE, WHICH WAS LED BY J. FITZPATRICK, THE INTERNATIONAL UNION STAFF REPRESENTATIVE AND J. COVE PRESIDENT OF THE RESPONDENT, PRESSED FOR REINSTATEMENT PLUS FULL COMPENSATION ON GUINDEHI'S BEHALF, THE COMPANY MAINTAINED ITS POSITION OF LAWFUL DISCHARGE. HOWEVER THERE WAS SOME INDICATION ON THE PART OF THE COMPANY AT THE CLOSE OF THE MEETING THAT IT MIGHT NEVERTHELESS RECONSIDER ITS POSITION. ON JULY 24, THE COMPANY INDICATED TO COVE THAT IT WAS NOW PREPARED TO OFFER THE COMPLAINANT ALTERNATE EMPLOYMENT AS A STRIPPER OPERATOR, AS GUINDEHI HAD PREVIOUSLY INDICATED THAT THE LACQUER OPERATION WAS PHYSICALLY TOO HEAVY FOR HIM.

5. ON JULY 24, COVE SO ADVISED THE COMPLAINANT OF THIS OFFER. WHEN GUINDEHI ASKED WHAT WERE HIS ALTERNATIVES, COVE REPLIED THAT HE COULD EITHER PROCEED WITH THE GRIEVANCE TO ARBITRATION OR ACCEPT THE COMPANY'S OFFER AND FILE A NEW GRIEVANCE FOR COMPENSATION. THE EVIDENCE IS CLEAR THAT AT THIS TIME COVE, WHOSE SOPHISTICATION IN MATTERS RELATING TO LABOUR RELATIONS, WE FIND, LEAVES SOMETHING TO BE DESIRED, WAS UNDER THE IMPRESSION THAT GUINDEHI COULD HAVE HIS GRIEVANCE PROCESSED THROUGH TO ARBITRATION AS A MATTER OF RIGHT. NEVERTHELESS, COVE DID INDICATE TO THE COMPLAINANT THAT BOTH HE HIMSELF AND FITZPATRICK, TOGETHER WITH THE MAJORITY OF THE MEMBERS OF THE COMMITTEE, WERE OF THE OPINION THAT GUINDEHI SHOULD RETURN TO WORK LEAVING THE RESOLUTION OF HIS CLAIM FOR COMPENSATION TO A LATER DATE. GUINDEHI THEN ADVISED THAT HE WANTED TO THINK OVER HIS "ALTERNATIVES" FOR A FEW DAYS. ON JULY 27, HE INFORMED COVE THAT HE WOULD PREFER THAT THE GRIEVANCE PROCEED ON TO ARBITRATION. COVE THEN ADVISED FITZPATRICK OF GUINDEHI'S DECISION NOT TO ACCEPT THEIR RECOMMENDATION.

6. THE GIST OF FITZPATRICKS'S TESTIMONY IS TO THE EFFECT THAT HIS MAIN CONCERN WAS TO GET THE COMPLAINANT BACK TO WORK AT A COMPARABLE RATE



OF PAY AND THAT THE MATTER OF COMPENSATION COULD BE DEALT WITH LATER THROUGH NEGOTIATION WITH THE COMPANY OR FAILING THAT, THEN PROCEEDING TO ARBITRATION ON THE BASIS OF AN UNJUST SUSPENSION. THUS, WHEN COVE INFORMED HIM OF THE COMPANY'S OFFER TO REINSTATE GUINDEHI, FITZPATRICK STATED THAT HE TELEPHONED THE COMPLAINANT EITHER ON AUGUST 1 OR 2, DURING WHICH TIME HE FULLY EXPLAINED THE REASONS FOR THE POSITION TAKEN BY THE RESPONDENT THAT HE HAD NO CHOICE BUT TO RETURN TO WORK IN THE CIRCUMSTANCES. HOWEVER, GUINDEHI REMAINED ADAMANT IN GOING TO ARBITRATION AND IN THE WITNESSES' WORDS "HE (GUINDEHI) ONLY WANTED A JUDGE TO HEAR HOW THE COMPANY HAD MISTREATED HIM AND HE ONLY SEEMED TO BE INTERESTED IN THE FOREMAN'S JOB WHICH HE CLAIMED WAS PROMISED TO HIM." GUINDEHI, TESTIFYING IN REPLY, CATEGORICALLY DENIED HAVING HAD ANY CONVERSATION WHATSOEVER WITH FITZPATRICK SINCE THE TIME OF THE GRIEVANCE MEETING OF JULY 19.

7. FITZPATRICK FURTHER TESTIFIED THAT LATER THAT WEEK, WHEN BASSETT INFORMED HIM THAT GUINDEHI HAD NOT IN FACT RETURNED TO WORK, THE WITNESS ADVISED HIM THAT A LETTER SHOULD BE SENT TO GUINDEHI EXPLAINING THE SITUATION, AND IF HE FAILED TO RESPOND, THEN THAT WOULD END THE MATTER AS FAR AS FITZPATRICK WAS CONCERNED.

8. ACCORDINGLY, BY LETTER DATED AUGUST 4, BASSETT INFORMED GUINDEHI AS FOLLOWS:

"IT IS OUR UNDERSTANDING THAT THE UNION PRESIDENT, MR. J. COVE, OFFERED YOU ON BEHALF OF THE COMPANY, ALTERNATIVE EMPLOYMENT AS A STRIPPER OPERATOR ON MONDAY, JULY 24, 1972.

THIS IS TO FORMALLY CONFIRM THAT THE COMPANY HAS RECONSIDERED ITS ORIGINAL POSITION AND IS THEREFORE WILLING TO GIVE YOU THE POSITION AS A STRIPPER OPERATOR. THIS CONSIDERATION IN TRANSFERRING YOU FROM A LACQUER OPERATOR TO A STRIPPER IS DUE TO THE FACT THAT YOU, YOURSELF, CLAIM THAT THE LACQUER OPERATOR JOB WAS TOO HEAVY.

IF YOU DO NOT RETURN TO WORK BY THURSDAY, AUGUST 10, 1972, AT 8:00 A.M., IT WILL BE DEEMED THAT YOU HAVE TERMINATED YOUR EMPLOYMENT WITH THIS COMPANY."

9. CONTRARY TO THE POSITION AS ARGUED BY COUNSEL FOR THE COMPLAINANT, AND HAVING REGARD TO ALL OF THE EVIDENCE AS ADDUCED, WE FIND, THAT AT THIS POINT, A BONA FIDE SETTLEMENT CONCERNING THE DISPOSITION OF GUINDEHI'S DISCHARGE GRIEVANCE WAS CONSUMMATED AS BETWEEN THE COMPANY AND THE RESPONDENT.

10. BY LETTER DATED AUGUST 8, (WITH A COPY TO COVE) GUINDEHI REPLIED TO BASSETT AS FOLLOWS:

"IT IS TRUE THAT MR. J. COVE INFORMED ME ON JULY 24 ABOUT THE OFFER MENTIONED IN YOUR LETTER. HOWEVER, ON JULY 27 I DID INFORM MR. COVE THAT YOUR OFFER IS UNSATISFACTORY. I ALSO REQUESTED ON JULY 27 THAT MY GRIEVANCE ABOUT YOUR UNREASONABLE TERMINATION OF MY EMPLOYMENT SHOULD BE REFERRED TO ARBITRATION. AT THAT TIME, JULY 27, MR. COVE INFORMED ME THAT HE WILL NOTIFY YOU ABOUT THAT REQUEST.

SINCE THE GRIEVANCE HAS NOT BEEN REFERRED TO ARBITRATION AS YET, I CONSIDER YOUR STATEMENT THAT MY EMPLOYMENT WILL BE DEEMED TO HAVE BEEN TERMINATED IF I DO NOT RETURN TO WORK BY 8:00 A.M. ON THURSDAY, AUGUST 10, 1972, TO BE ANOTHER OF YOUR VIOLATIONS OF THE COLLECTIVE AGREEMENT YOU HAVE WITH U.S.W.A. LOCAL UNION #7608. THIS IS ALSO A VIOLATION OF THE LABOUR RELATIONS ACT OF ONTARIO.

IF I DO NOT HEAR FROM EITHER YOU OR MR. COVE BY TUESDAY, AUGUST 15, 1972, ABOUT THE PLACE AND TIME OF THE MEETING OF THE ARBITRATION BOARD, I WILL BE OBLIGED TO TAKE ANY ACTION I FIND NECESSARY CONCERNING THIS MATTER."

11. GUINDEHI'S EVIDENCE IN THIS REGARD IS THAT HE TELEPHONED COVE LATER THAT EVENING AND WAS INFORMED BY COVE THAT THE RESPONDENT WOULD BE TAKING HIS GRIEVANCE TO ARBITRATION. ON AUGUST 22, GUINDEHI SENT A FURTHER LETTER TO COVE, ADVISING HIM AS FOLLOWS:

"REFERENCE IS MADE TO MY GRIEVANCE REPORT OF JUNE 20, 1972, CONCERNING THE UNJUSTIFIABLE TERMINATION OF MY EMPLOYMENT BY INDUSTRIAL WIRE AND CABLE (1970) LIMITED ON JUNE 15, 1972.

FURTHER TO OUR COMMUNICATIONS CONCERNING THAT GRIEVANCE, I WOULD LIKE TO INFORM YOU THAT I HAVE NOT AS YET HEARD ANY INFORMATION AS TO WHEN THAT MATTER WILL BE REFERRED TO ARBITRATION FOR FINAL SETTLEMENT.

AS YOU MAY RECALL MY FIRST REQUEST THAT THE GRIEVANCE SHOULD BE REFERRED TO ARBITRATION WAS ON JULY 27, 1972. I DID REPEAT THAT REQUEST AGAIN IN MY LETTER OF AUGUST 8 TO MR.

BASSETT OF WHICH I SENT YOU A COPY. THE REASON I MADE THAT REQUEST IS THAT THE COMPANY'S POSITION AFTER THE MEETING OF JULY 19 IS FAR FROM BEING CONSIDERED A SATISFACTORY SETTLEMENT TO THE GRIEVANCE. YOU YOURSELF STATED THAT THAT POSITION CANNOT BE CONSIDERED A FINAL SETTLEMENT AND THAT FURTHER STEPS ARE TO BE TAKEN TO ACHIEVE THAT GOAL. ACCORDING TO THE COLLECTIVE AGREEMENT BETWEEN THE COMPANY AND THE UNION, AS WELL AS THE LABOUR RELATIONS ACT, THE FIRST OF ANY FURTHER STEPS IS TO REFER THE GRIEVANCE TO ARBITRATION.

SINCE NOTHING HAS BEEN DONE IN THIS CONNECTION AS FAR AS I KNOW, I AM AGAIN ASKING YOU AS THE PRESIDENT OF THE LOCAL UNION TO REFER MY GRIEVANCE TO ARBITRATION IN ACCORDANCE WITH THE COLLECTIVE AGREEMENT.

I WILL APPRECIATE YOUR INFORMING ME IN WRITING ABOUT ANY ACTION, OR ACTIONS, TAKEN BY THE UNION IN THIS DIRECTION."

12. ON SEPTEMBER 6, WHEN COVE FAILED TO REPLY, GUINDEHI SENT HIM A FOLLOW-UP LETTER WHICH PROVIDED:

"THIS IS TO INFORM YOU THAT AS YET I HAVE NOT RECEIVED ANY RESPONSE FROM YOU TO MY LETTER OF AUGUST 22, 1972.

I WILL APPRECIATE YOUR INFORMING ME WITHOUT DELAY ABOUT THE FOLLOWING: A-ANY STEP(S) TAKEN BY THE UNION TO REFER MY GRIEVANCE OF JUNE 20, 1972, TO ARBITRATION;  
B-THE RESPONSE, IF ANY, OF INDUSTRIAL WIRE & CABLE (1970) LIMITED TO ANY ACTION TAKEN BY THE UNION.

IF NO RESPONSE TO THIS LETTER IS RECEIVED FROM YOU BY SEPTEMBER 21, 1972, WHICH IS FIFTEEN DAYS FROM NOW, IT WILL BE CONSIDERED THAT THE UNION TOOK NO ACTION TO REFER MY GRIEVANCE TO ARBITRATION FOR A FINAL SETTLEMENT."

13. FINALLY, ON SEPTEMBER 21, COVE REPLIED AS FOLLOWS:

"I APOLOGIZE FOR NOT ANSWERING YOURE (SIC) LETTER SOONER.

I HAVE RECENTLY BEEN IN TOUCH WITH OUR INTERNATIONAL REP MR. JOHN FITZPATRICK WITH THE



INTENTION OF TAKING YOURS (SIC) GRIEVANCE TO ARBITRATION BUT HE SAID THIS WOULD NOT BE POSSIBLE OWING TO THE FACT THAT YOU WERE OFFERED YOURS (SIC) JOB BACK WITH THE COMPANY UNDER THE TERMS IN THERE (SIC) LETTER TO YOU.

I AM SORRY THIS HAS HAPPENED THIS WAY BUT I FEEL I MUST GIVE WAY TO MR. FITZPATRICKS GREATER EXPERIENCE (SIC) IN THESE MATTERS.

IF YOU FIND YOU ARE UNABLE TO ACCEPT THIS DECISION I CAN ONLY SUGGEST YOU GET IN TOUCH WITH MR. FITZPATRICK OF YOURS (SIC) OWN ACCORD."

14. IT IS CLEAR THAT AS OF SEPTEMBER 21, THE TIME LIMITS FOR THE PROCESSING OF GUINDEHI'S GRIEVANCE TO THE ARBITRATION STAGE, AS SET OUT IN THE COLLECTIVE AGREEMENT, HAD BEEN EXCEEDED. WHEN COVE WAS QUESTIONED UPON CROSS-EXAMINATION AS TO THE REASON FOR THE DELAY IN HIS REPLY TO GUINDEHI, HE STATED THAT "I COULDN'T MAKE UP MY MIND." HAVING REGARD TO THE TOTALITY OF THE EVIDENCE, WE FIND THAT COVE'S PROCRASTINATING ACTIONS IN THIS REGARD CAN ONLY BE REGARDED AS NEGLIGENT. THE QUESTION NOW BEFORE US IS TO DETERMINE WHETHER COVE'S CONDUCT PRIOR TO HIS LETTER OF SEPTEMBER 21 LULLED GUINDEHI INTO A FALSE SENSE OF SECURITY IN BELIEVING THAT HIS GRIEVANCE WAS STILL PROCEEDING ON TO ARBITRATION. THE EFFECT OF FITZPATRICK'S TESTIMONY IS THAT HE DID NOT SHARE COVE'S VIEWS THAT GUINDEHI HAD AN INHERENT RIGHT TO PROCEED TO ARBITRATION AND THAT AN EXPLANATION OF HIS VIEW THAT A REASONABLE AND BINDING SETTLEMENT HAD BEEN ACHIEVED WAS PERSONALLY GIVEN TO THE COMPLAINANT OVER THE TELEPHONE EARLY IN AUGUST. AS PREVIOUSLY INDICATED, GUINDEHI ON THE OTHER HAND, DENIES SPEAKING WITH FITZPATRICK SINCE THE TIME OF THE MEETING WITH THE COMPANY ON JULY 12. THE DISPOSITION OF THIS COMPLAINT THEREFORE RESTS UPON A RESOLUTION OF THIS CONFLICTING TESTIMONY.

15. NORMALLY, WHEN THE BOARD IS CONFRONTED WITH DIRECTLY INCONSISTENT STATEMENTS AS ADDUCED THROUGH THE EVIDENCE OF OPPOSING WITNESSES, THE MATTER IS RESOLVED ON THE BASIS OF THE CREDIBILITY OF SUCH WITNESSES. ON THE ONE HAND, WE OBSERVE THE PAINSTAKING AND METICULOUS ACTIONS OF THE COMPLAINANT IN RECORDING THE EVENTS WHICH HAVE TRANSPIRED EFFECTING HIM SINCE THE TIME OF HIS DISCHARGE. IT IS DIFFICULT TO BELIEVE THAT SUCH A PERSON WOULD NOT HAVE RECORDED THE ESSENTIALS OF ANY ALLEGED TELEPHONE CONVERSATIONS HE MAY HAVE HAD WITH FITZPATRICK DURING EARLY AUGUST AT A TIME WHEN THE GRIEVANCE WAS APPARENTLY STILL AFOOT. ON THE OTHER HAND, WE FIND THAT FITZPATRICK'S TESTIMONY WITHSTOOD A MOST ABLE AND PENETRATING CROSS-EXAMINATION. HAVING REGARD TO THE NATURE AND EXTENT OF FITZPATRICK'S DUTIES, WE FIND NOTHING SINISTER IN HIS FAILURE TO CONFIRM BY LETTER HIS ALLEGED CONVERSATION WITH GUINDEHI AT THIS TIME, AS INSINUATED BY COUNSEL FOR THE COMPLAINANT, ALTHOUGH WITH THE BENEFIT OF HINDSIGHT, IT NOW BECOMES CLEAR THAT THIS WOULD HAVE BEEN AN APPROPRIATE PROCEDURE TO ADOPT. ACCORDINGLY, WE FIND NOTHING IN THE EVIDENCE TO ENABLE US TO

PREFER THE EVIDENCE OF THE ONE WITNESS OVER THAT OF THE OTHER. THE BOARD, IN THE IDEAL WOODWORKING LIMITED CASE OLRB M.R. JUNE, 1970, P. 346 WAS CONFRONTED WITH A SIMILAR DILEMMA IN RELATION TO TWO DIFFERENT VERSIONS OF A CONVERSATION AS ATTESTED TO BY OPPOSING WITNESSES. IN PREFERRING THE EVIDENCE OF MR. SLIVKA, AS ADDUCED ON BEHALF OF THE RESPONDENT COMPANY IN THAT CASE, OVER THAT OF MR. IERACI, WHO TESTIFIED ON BEHALF OF THE COMPLAINANT, THE BOARD AT PAGE 348 STATED AS FOLLOWS:

"WHEN THE EVIDENCE OF MR. IERACI IS BALANCED AGAINST THE EVIDENCE OF MR. SLIVKA WE ARE UNABLE TO FIND ANYTHING IN THE Demeanour OR TESTIMONY OF THESE TWO WITNESSES WHICH WOULD CAUSE US TO BELIEVE OR DISBELIEVE THE EVIDENCE OF ONE AS OPPOSED TO THE OTHER, AND ACCORDINGLY HAVING REGARD TO THE ONUS OF PROOF IN MATTERS OF THIS NATURE, WE ARE NOT PERSUADED ON THE BALANCE OF PROBABILITIES THAT MR. IERACI'S VERSION OF HIS CONVERSATION WITH MR. SLIVKA IS THE CORRECT VERSION."

16. HAVING REGARD THEREFORE TO ALL OF THE CIRCUMSTANCES OF THIS CASE AND TAKING INTO ACCOUNT THE PRINCIPLES AS ABOVE CITED, WE FIND THAT THE EVIDENCE OF GUINDEHI AS ADDUCED IN REPLY, IS NOT SUFFICIENT TO REFUTE FITZPATRICK'S TESTIMONY CONCERNING THE CONVERSATION ALLEGED TO HAVE TRANSPIRED BETWEEN THEM ON AUGUST 1 OR AUGUST 2, 1972.

17. IN THE RESULT, THEREFORE, WE ARE NOT SATISFIED ON THE BALANCE OF PROBABILITIES, THAT IN THESE CIRCUMSTANCES, THE RESPONDENT ACTED IN A MANNER THAT WAS ARBITRARY, DISCRIMINATORY OR IN BAD FAITH, AS CONTEMPLATED UNDER SECTION 60 OF THE ACT AND PROCEEDINGS IN THIS REGARD ARE ACCORDINGLY DISMISSED.

3418-72-R: KITCHENER WATERLOO CIVIC EMPLOYEES' UNION, LOCAL 68, CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE CITY OF WATERLOO (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND A. MAIN.

APPEARANCES AT THE HEARING: W. A. ACTON AND W. BROWN FOR THE APPLICANT; JOHN P. SANDERSON, WILLIAM WHITE AND D. C. SCHAEFER FOR THE RESPONDENT.

DECISION OF THE BOARD: APRIL 3, 1973.

1. THIS IS AN APPLICATION UNDER SECTION 55 OF THE LABOUR RELATIONS ACT.

2. THE APPLICANT IS APPLYING TO THE BOARD WITH RESPECT TO THE

BARGAINING RIGHTS OF THE APPLICANT AS A RESULT OF AN ERECTION OF ONE OR MORE MUNICIPALITIES WITH ANOTHER MUNICIPALITY OR AN AMALGAMATION, UNION OR JOINING OF TWO OR MORE MUNICIPALITIES INVOLVING THE RESPONDENT ALLEGED TO HAVE TAKEN PLACE ON OR ABOUT JANUARY 1, 1973.

3. THE APPLICANT (HEREINAFTER REFERRED TO AS CUPE LOCAL 68) FILED WITH ITS APPLICATION PURPORTED MINUTES OF A MEETING OF MEMBERS OF CUPE LOCAL 68 AND MEMBERS OF THE CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL 1093 (HEREINAFTER REFERRED TO AS CUPE LOCAL 1093) HELD ON DECEMBER 21, 1972. ACCORDING TO THE MINUTES, THE MEMBERS OF THE TWO LOCALS ADOPTED A RESOLUTION, A COPY OF WHICH WAS ALSO FILED WITH THE APPLICATION, BY WHICH CUPE LOCAL 68 AND CUPE LOCAL 1093 MERGED TO FORM A LOCAL KNOWN AS CUPE LOCAL 1542, CITY OF WATERLOO. ONE OF THE RECITALS TO THE RESOLUTION STATES THAT WITH THE FORMATION OF CUPE LOCAL 1542, CUPE LOCAL 68 AND CUPE LOCAL 1093 CEASED TO EXIST AS SEPARATE ORGANIZATIONS.

4. SINCE ACCORDING TO THE ABOVE DOCUMENTS THE APPLICANT CEASED TO EXIST ON DECEMBER 21, 1972 AT THE TIME OF ITS PURPORTED MERGER WITH CUPE LOCAL 1093 TO FORM CUPE LOCAL 1542, IN THESE CIRCUMSTANCES CUPE LOCAL 68 CANNOT BE THE APPLICANT IN THE INSTANT APPLICATION WHICH WAS FILED ON MARCH 8, 1973.

5. BEFORE MAKING OUR DISPOSITION ON THE APPLICATION, WE WOULD MENTION THAT ON THE DOCUMENT CONTAINING THE MERGER RESOLUTION REFERRED TO ABOVE THERE IS AN ADDED PROVISION BELOW THE RESOLUTION WHICH CONTEMPLATES THE POSSIBILITY OF AN APPLICATION WITH RESPECT TO THE MERGER BEING MADE TO THE BOARD UNDER SECTION 54 OF THE ACT WHICH PROVIDES FOR A DECLARATION OF SUCCESSOR UNION.

6. FOR THE REASONS STATED ABOVE THE INSTANT APPLICATION MUST BE AND IS HEREBY DISMISSED.

3226-72-R: THE KITCHENER CITY HALL OFFICE AND CLERICAL STAFF, LOCAL 791, CHARTERED BY THE CANADIAN UNION OF PUBLIC EMPLOYEES AND AFFILIATED WITH THE CANADIAN LABOUR CONGRESS (APPLICANT) V. THE REGIONAL MUNICIPALITY OF WATERLOO (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

DECISION OF THE BOARD: APRIL 3, 1973.

1. THIS IS AN APPLICATION UNDER SECTION 55 OF THE LABOUR RELATIONS ACT.

2. THE RESPONDENT WAS CREATED BY THE REGIONAL MUNICIPALITY OF WATERLOO ACT, 1972. BY THAT ACT THE CORPORATION OF THE COUNTY OF WATERLOO WAS DISSOLVED ON JANUARY 1, 1973 AND AS OF THAT DATE THE RESPONDENT STEPPED INTO ITS PLACE. THE CREATION OF THE RESPONDENT FALLS WITHIN THE PURVIEW OF



SUBSECTION (11) OF SECTION 55. ACCORDINGLY, PURSUANT TO THE POWERS GRANTED TO THE BOARD UNDER SUBSECTION (11) AND HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD FINDS THAT ALL CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, ONE SECRETARY TO EACH OF THE FOLLOWING: COMMISSIONER OF PLANNING AND DEVELOPMENT, CHIEF ADMINISTRATOR, CHAIRMAN, CLERK, SOLICITOR, COMMISSIONER OF SOCIAL SERVICES, COMMISSIONER OF ENGINEERING AND COMMISSIONER OF FINANCE, STUDENTS EMPLOYED DURING THE SUMMER VACATION PERIOD, ROTARY ENGINEERING STUDENTS EMPLOYED DURING THEIR WORK TERM, PERSONS EMPLOYED BY THE LIBRARY BOARD AND THOSE PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

3. FOR PURPOSES OF CLARITY THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT THE SECRETARY TO THE CO-ORDINATOR, SOCIAL SERVICES IS INCLUDED IN THE BARGAINING UNIT.

4. THE BOARD DIRECTS THAT A REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT DESCRIBED IN PARAGRAPH 2. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

...

6. THE MATTER IS REFERRED TO THE REGISTRAR.

3039-72-U: LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, S.E.I.U., A.F.L. - C.I.O. - C.L.C. (COMPLAINANT) V. KOMOKA NURSING HOMES LIMITED (RESPONDENT).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND F.W. MURRAY.

APPEARANCES AT THE HEARING: A. CAMPBELL, CHARLES DAVIDSON, MARY SMITH AND LEE LAWRENCE FOR THE COMPLAINANT; SAMUEL LERNER, Q.C., HELMUT BUXBAUM AND ERNEST BOGAERT FOR THE RESPONDENT.

DECISION OF THE BOARD: APRIL 3, 1973.

1. IN THIS MATTER THE COMPLAINANT ALLEGES THAT THE GRIEVORS WERE DISCHARGED CONTRARY TO THE LABOUR RELATIONS ACT AND REQUESTS THAT THEY BE REINSTATED TO THEIR EMPLOYMENT WITH COMPENSATION.

2. AT THE OUTSET OF THE HEARING THE COMPLAINANT ADVISED THAT IT WAS NOT PROCEEDING WITH THE COMPLAINT ON BEHALF OF THE GRIEVOR, DOROTHY GEROW, AND ACCORDINGLY THE PROCEEDINGS INsofar AS THEY AFFECT DOROTHY GEROW ARE TERMINATED.

3. THE REMAINING EMPLOYEE IS MISS LEE LAWRENCE WHO HAD BEEN HIRED BY THE RESPONDENT AS A NURSE ON NOVEMBER 6, 1972. SHE WAS GIVEN NOTICE OF HER DISCHARGE BY THE RESPONDENT ON DECEMBER 11, 1972, AND TERMINATED ON NOVEMBER 15, 1972.

4. IT WAS AGREED THAT THE UNION WAS ORGANIZING THE EMPLOYEES OF THE RESPONDENT; THAT THE UNION HAD APPLIED FOR CERTIFICATION, AND THAT THERE HAD BEEN A REPRESENTATION VOTE IN WHICH THE UNION HAD OBTAINED A MAJORITY.

5. SUBSEQUENT TO THE VOTE PERSONS IN THE STAFF ROOM WERE DISCUSSING THE UNION. PRESENT DURING THE DISCUSSION WAS MARIE BUXBAUM, WHO WAS IDENTIFIED AS A RELATIVE OF THE OWNER. WHEN MISS LAWRENCE WAS ASKED HOW SHE VOTED, SHE INDICATED TO MARIA BUXBAUM AS FOLLOWS: "IF I WANTED YOU TO KNOW I WOULD HAVE MARKED MY BALLOT IN FRONT OF YOU". IT WAS MISS LAWRENCE'S OPINION THAT IN THE CONTEXT OF THE DISCUSSION THERE WAS AN OBVIOUS INFERENCE FROM HER STATEMENT TO THE EFFECT THAT SHE HAD VOTED FOR THE UNION. MISS LAWRENCE ALSO INDICATED THAT IN HER OPINION AND IN THE CONTEXT OF THE DISCUSSION MARIA BUXBAUM APPEARED TO RESENT THAT MISS LAWRENCE HAD VOTED FOR THE UNION.

6. THE EVIDENCE ALSO INDICATED THAT SUBSEQUENT TO THE VOTE MR. BUXBAUM, WHO EFFECTIVELY OPERATES THE RESPONDENT COMPANY, REMOVED A RECORD PLAYER FROM THE STAFF ROOM AND CANCELLED THE CHRISTMAS PARTY. WHILE THERE WAS SOME ATTEMPT TO EXPLAIN BOTH THESE INSTANCES, WE ARE OF THE OPINION THAT THE REMOVAL OF THE RECORD PLAYER AND THE CANCELLATION OF THE CHRISTMAS PARTY ARE SUFFICIENT TO INDICATE A HOSTILITY TO THE UNION, AND THAT THE REMOVAL OF THE RECORD PLAYER AND THE CANCELLATION OF THE CHRISTMAS PARTY WAS A REACTION TO THE UNION HAVING WON THE REPRESENTATION VOTE.

7. THE TESTIMONY ON BEHALF OF THE RESPONDENT CONCERNING MISS LAWRENCE INDICATES THAT IN NOVEMBER OF 1972, AN APARTMENT ON THE RESPONDENT PREMISES WAS LEASED TO MISS LAWRENCE. IN NOVEMBER, ANOTHER EMPLOYEE OF THE RESPONDENT, MR. ZECCA, WHO ALSO LIVED ON THE PREMISES PASSED MISS LAWRENCE'S APARTMENT AND SAW HER STANDING WITH HER BACK TO THE WINDOW, AND ALSO OBSERVED THREE OTHER YOUNG MEN STANDING IN THE APARTMENT WITH GLASSES IN THEIR HAND. MR. ZECCA TESTIFIED THAT THE PERSONS WERE STANDING AND TALKING AND THERE APPEARED TO BE A PARTY GOING ON.

8. MISS LAWRENCE IS SIXTEEN YEARS OF AGE AND SHARED THE APARTMENT WITH ANOTHER EMPLOYEE WHO WAS APPROXIMATELY SEVENTEEN YEARS OF AGE. MISS LAWRENCE ADMITTED THAT THE OCCURRENCE DID TAKE PLACE, BUT SHE TESTIFIED THAT SHE DOES NOT DRINK AND THERE IS NO EVIDENCE THAT THE PARTY WAS BOISTEROUS OR THAT IT WENT ON VERY LATE. MR. ZECCA TESTIFIED THAT THE PARTY APPEARED TO END AT APPROXIMATELY 12:30 P.M.

9. SOMETIME IN NOVEMBER MR. ZECCA RELATED THE INCIDENT TO MR. BUXBAUM WHO APPEARED TO BE VERY DISPLEASED. NOTWITHSTANDING HIS DISPLEASURE MR. BUXBAUM APPARENTLY WAITED UNTIL AFTER THE REPRESENTATION VOTE AND

INDEED UNTIL ALMOST IMMEDIATELY AFTER THE CONVERSATION REFERRED TO ABOVE WITH MARIA BUXBAUM, TO DISCUSS THE MATTER WITH MR. BOGAERT, WHO IS THE ADMINISTRATOR OF THE RESPONDENT COMPANY. MR. BOGAERT TESTIFIED THAT HE HEARD MISS LAWRENCE HAD ENGAGED IN INAPPROPRIATE BEHAVIOUR AND SAID THAT IT WAS HIS DECISION TO RELEASE HER AFTER HE HAD TALKED TO MR. BUXBAUM. LATER IN HIS TESTIMONY MR. BOGAERT SAID THAT THE DECISION TO TERMINATE MISS LAWRENCE WAS A JOINT DECISION INVOLVING MR. BUXBAUM. MR. BUXBAUM WAS NOT CALLED TO TESTIFY.

10. MR. BOGAERT ALSO INDICATED THAT MISS LAWRENCE'S WORK PERFORMANCE WAS SUBSTANDARD. HOWEVER, AT THE TIME SHE WAS GIVEN NOTICE MISS LAWRENCE HAD BEEN WORKING FOR ONLY ONE MONTH. DURING THAT PERIOD SHE WAS ABSENT FOR ONE WEEK BECAUSE OF WORKMAN'S COMPENSATION AND FOR AN ADDITIONAL TWO OR THREE DAYS BECAUSE OF ILLNESS. SHE HAD THEREFORE EFFECTIVELY WORKED FOR ONLY THREE WEEKS. SHE WAS A NEW EMPLOYEE AND A YOUNG GIRL AND IT IS OBVIOUS THAT THE LEVEL OF WORK PERFORMANCE EXPECTED IN THESE CIRCUMSTANCES WOULD NOT BE THE LEVEL WHICH WOULD BE DEMANDED FROM AN EXPERIENCED EMPLOYEE. MR. BOGAERT INDICATES THAT HE RECOGNIZED THAT SHE WAS A NEW EMPLOYEE AND SUGGESTS THAT THERE WOULD BE SOME TOLERANCE FOR AN EMPLOYEE IN THIS TYPE OF SITUATION. STRANGELY ENOUGH AT THE DISMISSAL INTERVIEW MR. BOGAERT SUGGESTED THAT HE WOULD GIVE MISS LAWRENCE A REFERENCE.

11. IN THE RESULT WE ARE NOT PREPARED TO ACCEPT THE VERSION OF EVENTS WHICH HAS BEEN GIVEN BY THE RESPONDENT COMPANY. IF THE RESPONDENT COMPANY DEEMED MISS LAWRENCE'S BEHAVIOUR TO BE INAPPROPRIATE, AND THE ONLY EXAMPLE REFERRED TO BY THE RESPONDENT IS THE PARTY WHICH WAS OBSERVED BY MR. ZECCA, THEN IT IS VERY DIFFICULT TO EXPLAIN WHY MR. BUXBAUM WAITED UNTIL AFTER THE REPRESENTATION VOTE IN ORDER TO DISMISS MISS LAWRENCE. FURTHER, WE ARE NOT PREPARED TO ACCEPT THE EVIDENCE CONCERNING MISS LAWRENCE'S WORK PERFORMANCE. CERTAINLY HER PERFORMANCE IN THE EARLY STAGES OF EMPLOYMENT COULD NOT BE EXPECTED TO BE OF A HIGH STANDARD AND GIVEN THAT SHE WAS A NEW EMPLOYEE AND WAS LEARNING, WE ARE OF THE OPINION THAT THE DECISION TO DISMISS MISS LAWRENCE WAS TOO PRECIPITOUS. ON THE OTHER HAND, THE TIMING OF THE DISMISSAL IS MORE CONSISTENT WITH THE EXPLANATION GIVEN BY MISS LAWRENCE WHICH IS THAT SHE HAD INDICATED HER APPROVAL OF THE UNION AND COULD ONLY CONCLUDE THAT THE DISMISSAL TOOK PLACE BECAUSE MARIA BUXBAUM IN TURN RELATED THE INCIDENT TO MR. BUXBAUM.

12. FURTHER, MR. BUXBAUM WAS NOT CALLED TO TESTIFY ABOUT THE DISCHARGE OF MISS LAWRENCE. WHILE MR. BOGAERT DID TESTIFY THAT HE HAD A HAND IN TERMINATING MISS LAWRENCE, IT IS OBVIOUS THAT MR. BUXBAUM WAS THE MOVING FORCE BEHIND THE DISMISSAL. IN THESE CIRCUMSTANCES THE FAILURE OF MR. BUXBAUM TO TESTIFY AS TO THE CIRCUMSTANCES SURROUNDING THE DISMISSAL OF MISS LAWRENCE, ALTHOUGH HE WAS PRESENT AT THE HEARING IS SUFFICIENT TO ENABLE US TO DRAW AN INFERENCE THAT ANY EVIDENCE GIVEN BY MR. BUXBAUM WOULD BE ADVERSE TO THE RESPONDENT.

13. ACCORDINGLY IT IS ORDERED THAT MISS LAWRENCE SHOULD BE REINSTATED TO HER EMPLOYMENT WITH COMPENSATION. HOWEVER WE ARE NOT PREPARED



TO GRANT MISS LAWRENCE COMPENSATION FOR THE PERIOD BETWEEN THE DATE OF HER DISMISSAL AND THE DATE OF HER REINSTATEMENT BECAUSE SHE DID NOT ACT PROMPTLY TO MITIGATE HER DAMAGES. ACCORDINGLY SHE IS TO RECEIVE COMPENSATION FROM THE DATE OF HER REGISTRATION WITH THE UNEMPLOYMENT INSURANCE COMMISSION AND MANPOWER UNTIL THE DATE OF HER REINSTATEMENT, IN AN AMOUNT TO BE AGREED UPON BY THE PARTIES. IN THE EVENT THAT THE PARTIES ARE UNABLE TO AGREE ON THE AMOUNT THE BOARD WILL REMAIN SEIZED OF THAT ISSUE.

3271-72-U: MELDRUM R. GAREAU (APPLICANT) V. THE CIVIL SERVICE ASSOCIATION OF ONTARIO (INC.) (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS A. MAIN AND J. E. C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: BRIAN P. BELLMORE, L. A. PATTILLO, M. GAREAU AND M. RIDDELL FOR THE APPLICANT; DONALD J. M. BROWN AND J. BEAMISH FOR THE RESPONDENT.

DECISION OF THE BOARD: APRIL 4, 1973.

1. THIS IS AN APPLICATION FOR A DECLARATION THAT THE RESPONDENT CALLED OR AUTHORIZED AN UNLAWFUL LOCKOUT OF ITS EMPLOYEES, COMMENCING ON OR ABOUT WEDNESDAY, FEBRUARY 7, 1973.
2. THE BOARD FINDS THAT A COLLECTIVE AGREEMENT BETWEEN THE CIVIL SERVICE ASSOCIATION OF ONTARIO (INC.) AND REPRESENTATIVES AND TECHNICAL STAFF UNION (HEREINAFTER CALLED STAFF UNION) WAS IN OPERATION AT ALL MATERIAL TIMES.
3. SECTION 63(1) OF THE LABOUR RELATIONS ACT PROVIDES:  
  
WHERE A COLLECTIVE AGREEMENT IS IN OPERATION,  
NO EMPLOYEE BOUND BY THE AGREEMENT SHALL STRIKE  
AND NO EMPLOYER BOUND BY THE AGREEMENT SHALL  
LOCK OUT SUCH AN EMPLOYEE.
4. SECTION 1(1)(i) OF THE LABOUR RELATIONS ACT STATES THAT:  
  
"LOCK-OUT" INCLUDES THE CLOSING OF A PLACE OF  
EMPLOYMENT, A SUSPENSION OF WORK OR A REFUSAL  
BY AN EMPLOYER TO CONTINUE TO EMPLOY A NUMBER  
OF HIS EMPLOYEES, WITH A VIEW TO COMPEL OR IN-  
DUCE HIS EMPLOYEES, OR TO AID ANOTHER EMPLOYER  
TO COMPEL OR INDUCE HIS EMPLOYEES, TO REFRAIN  
FROM EXERCISING ANY RIGHTS OR PRIVILEGES UNDER  
THIS ACT OR TO AGREE TO PROVISIONS OR CHANGES  
IN PROVISIONS RESPECTING TERMS OR CONDITIONS  
OF EMPLOYMENT OR THE RIGHTS, PRIVILEGES OR DU-  
TIES OF THE EMPLOYER, AN EMPLOYERS' ORGANIZATION,  
THE TRADE UNION, OR THE EMPLOYEES.

5. THE RESPONDENT DENIES THAT IT LOCKED OUT ANY OF ITS EMPLOYEES, INCLUDING THE APPLICANT, AND ALLEGES, ON THE CONTRARY, THAT THE EMPLOYEES, INCLUDING THE APPLICANT, ENGAGED IN AN UNLAWFUL STRIKE COMMENCING AT OR ABOUT 4.30 P.M. ON FEBRUARY 5, 1973.
6. THE ANNUAL MEETING OF THE RESPONDENT TOOK PLACE IN NOVEMBER OF 1972. ONE OF THE PURPOSES OF THE MEETING WAS TO ELECT DIRECTORS. DELEGATES FROM THE VARIOUS DIVISIONS OF THE RESPONDENT ATTENDED THE MEETING. THE APPLICANT AND OTHER STAFF PERSONNEL ALSO ATTENDED THE MEETING AS "RESOURCE PERSONNEL". THEIR INSTRUCTIONS WERE TO ASSIST THE DELEGATES, BUT TO REFRAIN FROM ANY POLITICAL ACTIVITY WITH RESPECT TO THE ELECTIONS.
7. FOLLOWING THE ANNUAL MEETING OF THE RESPONDENT, IT BECAME KNOWN THAT THE BOARD OF DIRECTORS WAS INSTITUTING AN INVESTIGATION INTO ALLEGATIONS THAT MEMBERS OF THE STAFF HAD, CONTRARY TO THE INSTRUCTIONS GIVEN, ENGAGED IN THE POLITICS OF THE ELECTION. SOME PRELIMINARY INVESTIGATIONS WERE CARRIED OUT IN DECEMBER. ON OR ABOUT FEBRUARY 4, 1973, HOWEVER, THE APPLICANT AND OTHER MEMBERS OF THE STAFF UNION BECAME AWARE OF THE FACT THAT A MORE FORMAL INVESTIGATION WAS TO BE CARRIED ON WHEREIN THE DELEGATES TO THE ANNUAL MEETING AND THE EX-DIRECTORS AND THE INCUMBENT BOARD OF DIRECTORS WERE TO REPORT TO THE BOARD OF DIRECTORS WITH RESPECT TO ANY KNOWLEDGE THEY MIGHT HAVE OF INTERFERENCE WITH THE ELECTION BY STAFF MEMBERS. IT WAS INDICATED THAT THE BOARD OF DIRECTORS HAD RETAINED A FIRM OF PRIVATE INVESTIGATORS TO ASSIST IN THE MATTER AND WOULD OBTAIN A POSTAL ADDRESS TO WHICH ANY INFORMATION MIGHT BE MAILED. ONLY TWO DIVISIONS OF THE RESPONDENT WERE INVOLVED.
8. THE APPLICANT AND OTHER MEMBERS OF THE STAFF UNION TOOK SERIOUS OBJECTION TO THE COURSE OF ACTION PROPOSED BY THE RESPONDENT. THEIR CONCERN RESULTED IN A MEETING OF THE APPLICANT AND OTHER MEMBERS OF THE STAFF AT NOON ON FEBRUARY 5, 1973. THEY DISCUSSED THE MATTER OF THE INVESTIGATION; CONCLUDED THAT THEY COULD NOT ACCEPT IT AND DECIDED UPON A COURSE OF ACTION. IT WAS AGREED THAT AN APPROACH SHOULD BE MADE TO MR. G. GEMMELL, PRESIDENT OF THE RESPONDENT UNION PRESENTING THREE DEMANDS. THE DEMANDS WERE THAT THE INVESTIGATION BE STOPPED; THAT ALL STAFF BE EXONERATED; THAT MR. HAROLD BOWEN, WHO HAD RETIRED AS GENERAL MANAGER, BE RE-EMPLOYED IN SOME CAPACITY. IT IS TO BE NOTED THAT THIS LATTER REQUEST BEARS NO DIRECT RELATION TO THE FIRST TWO OF THE DEMANDS. THE APPLICANT TESTIFIED THAT IT WAS AGREED BY THOSE ATTENDING THIS MEETING THAT THEIR SERVICES WOULD BE WITHHELD IF THE DEMANDS WERE NOT MET.
9. AT APPROXIMATELY 4.00 P.M. ON FEBRUARY 5, 1973, THE DEMANDS WERE PRESENTED TO GEMMELL TOGETHER WITH THE FURTHER DEMAND THAT A REPLY BE GIVEN WITHIN HALF AN HOUR. THE APPLICANT TESTIFIED THAT AT 4.30 P.M., GEMMELL SAID THAT HE COULD NOT REVERSE THE DECISION OF THE BOARD OF DIRECTORS. THE APPLICANT AND HIS ASSOCIATES TOOK THIS TO MEAN THAT THIS WAS A REFUSAL OF THEIR THREE POINTS. THEY THEN COMMENCED TO WITHHOLD THEIR SERVICES.
10. THE APPLICANT TESTIFIED THAT THE GROUP DID NOT REPORT FOR WORK

THE FOLLOWING DAY, FEBRUARY 6, 1973. HE STATED, THEY COULD NOT RETURN TO WORK BECAUSE THEY FELT THEY COULD NOT WORK UNDER THE CONDITIONS BEING IMPOSED UPON THEM, I.E. THE INVESTIGATION. PICKET LINES WERE SET UP AT 8.30 ON THE MORNING OF FEBRUARY 6, 1973. THE EMPLOYEES REFUSED TO RETURN TO WORK ALTHOUGH REQUESTED TO DO SO. THE LINES WERE MAINTAINED THROUGHOUT THE WHOLE PERIOD DURING WHICH THE APPLICANT ALLEGES THE LOCK-OUT OCCURRED.

11. IT WAS ARGUED THAT THE VERY INTRODUCTION OF THE INVESTIGATION INVOLVED A CHANGE IN THE WORKING CONDITIONS OF THE PERSONS CONCERNED OF SUCH MAGNITUDE AND EFFECT AS TO RENDER IT IMPOSSIBLE FOR THE EMPLOYEES TO CONTINUE TO WORK AND THAT CONSEQUENTLY, THE IMPOSITION OF THE INVESTIGATION WAS, CONSTRUCTIVELY AT LEAST, A LOCKOUT. ABLY AND INGENUOUSLY AS THE ARGUMENT WAS MADE, THE BOARD DOES NOT FIND ITSELF IN AGREEMENT WITH ITS PROPOSITION. WE MIGHT SAY THAT THE ADDITIONAL DEMAND MADE WITH RESPECT TO RE-EMPLOYMENT OF BOWEN DID NOTHING TO ENHANCE THE ARGUMENT. FURTHERMORE, THE EVIDENCE MAKES IT CLEAR THAT, IN ANY EVENT, THE PROPOSED INVESTIGATION WAS NOT A NEW PHENOMENON EITHER IN CONCEPT OR IN METHOD IN THE RELATIONSHIP BETWEEN THE PARTIES. WE MIGHT ADD THAT, IN OUR OPINION, THE NATURE AND EXTENT OF THE INVESTIGATION RECEIVED SOME DEGREE OF EXAGGERATION AND EMBELLISHMENT IN THE PROCESS OF COMMUNICATION WITH THE EMPLOYEES AT LARGE.

12. THE ARGUMENT WAS ALSO ADVANCED THAT THE EMPLOYMENT OF SECURITY GUARDS BY THE RESPONDENT ON FEBRUARY 7, 1973 PUT A NEW COMPLEXION UPON THE AFFAIR SO AS TO RENDER THE SITUATION AT LEAST FROM THAT DATE A LOCK-OUT. IN SUPPORT OF THIS CONTENTION EVIDENCE WAS GIVEN WITH RESPECT TO CONFRONTATIONS, WHICH WE FIND WERE ARRANGED BY THE APPLICANT'S ASSOCIATES, WITH THE SECURITY GUARDS.

13. ON A FULL CONSIDERATION OF THE FOREGOING AND ALL OTHER EVIDENCE ADDUCED, AND KEEPING IN MIND THE TERMS OF THE COLLECTIVE AGREEMENT AND THE ARGUMENT MADE BY COUNSEL FOR THE APPLICANT WITH RESPECT TO THE OPEN NATURE OF THE TERMS OF SECTION 1(1)(1) OF THE ACT, THE BOARD IS DRIVEN TO THE INELUCTABLE CONCLUSION THAT COMMENCING AT OR ABOUT 4.30 P.M. ON FEBRUARY 5, 1973, THE APPLICANT AND HIS ASSOCIATES PARTICIPATED IN A STRIKE AGAINST THE RESPONDENT WHICH WAS CONTRARY TO THE PROVISIONS OF SECTION 63(1) OF THE ACT.

14. THE BOARD FURTHER FINDS THAT NOTHING THAT OCCURRED IN THE RELATIONSHIP BETWEEN THE PARTIES DURING THE PERIOD UNDER REVIEW BY THE BOARD ALTERS IN ANY WAY THE NATURE OF THE WORK CESSATION SO AS TO CHANGE WHAT WAS A STRIKE INTO A LOCKOUT.

15. THE BOARD THEREFORE FINDS THAT THE RESPONDENT HAS NOT LOCKED OUT THE APPLICANT OR ANY OF ITS EMPLOYEES AS ALLEGED BY THE APPLICANT.

16. THE APPLICATION IS CONSEQUENTLY DISMISSED.



1339-71-R: METROPOLITAN PLUMBING AND HEATING CONTRACTORS ASSOCIATION,  
A DIVISION OF THE MECHANICAL CONTRACTORS ASSOCIATION TORONTO (APPLI-  
CANT) V. THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE  
PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA,  
LOCAL 46 (RESIDENTIAL DIVISION) (RESPONDENT) V. TORONTO HOME BUILDERS'  
ASSOCIATION (INTERVENER).

BEFORE: D. E. FRANKS, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND  
 F. W. MURRAY.

APPEARANCES AT THE HEARING: W.S. COOK AND D. LEWIS FOR THE APPLICANT;  
 L.C. ARNOLD AND T. WILSON FOR THE RESPONDENT; J.W. HEALY, Q.C. AND PETER  
 STEVENS FOR TORONTO HOME BUILDERS' ASSOCIATION.

DECISION OF THE BOARD: APRIL 4, 1973.

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2. THIS IS AN APPLICATION FOR ACCREDITATION IN WHICH THE APPLI-  
 CANT SEEKS TO BE ACCREDITED AS THE BARGAINING AGENT FOR CERTAIN EMPLOYERS  
 WHO HAVE A BARGAINING RELATIONSHIP WITH THE RESPONDENT IN RESPECT OF CER-  
 TAIN OF THEIR EMPLOYEES. THE APPLICANT AND THE RESPONDENT ARE PARTIES  
 TO A COLLECTIVE AGREEMENT DATED JUNE 9, 1971, WHICH WAS SIGNED BY THE  
 PARTIES ON JULY 14, 1971, THE TERM OF WHICH EXTENDS TO APRIL 30, 1973.  
 THIS AGREEMENT IS BINDING UPON MORE THAN ONE EMPLOYER IN THE CONSTRUC-  
 TION INDUSTRY AFFECTED BY THIS APPLICATION. THE BOARD THEREFORE FINDS  
 THAT IT HAS THE JURISDICTION UNDER SECTION 113 OF THE ACT TO ENTERTAIN  
 THIS APPLICATION.

. . .

5. THE APPLICANT IN ITS APPLICATION SUBMITTED THAT THE APPROPRIATE  
 UNIT OF EMPLOYERS FOR ACCREDITATION IS ALL EMPLOYERS OF PLUMBERS AND  
 PLUMBERS' APPRENTICES, STEAMFITTERS AND STEAMFITTERS' APPRENTICES AND  
 WELDERS, IN A GEOGRAPHIC AREA CORRESPONDING TO THAT IN THE COLLECTIVE  
 AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT REFERRED TO IN PARA-  
 GRAPH 2, SUPRA. THE APPLICANT SET OUT AS THE SECTOR OF THE CONSTRUCTION  
 INDUSTRY APPROPRIATE FOR ACCREDITATION "RESIDENTIAL" "PROPERTY DRAINS".  
 AT THE HEARING IN THIS MATTER THE APPLICANT TOOK THE POSITION THAT THE  
 TERM "PROPERTY DRAINS" IN THE DESCRIPTION OF THE SECTOR OF THE CONSTRUC-  
 TION INDUSTRY WAS NOT NECESSARY SINCE THE PROPERTY DRAINS, IF THEY RELATE  
 TO THE RESIDENTIAL SECTOR WERE THEN PART OF THAT SECTOR. THE RESPONDENT'S  
 CONCERN WITH THIS WAS THE POSSIBLE INFERENCE THAT DELETING THE TERM PRO-  
 PERTY DRAINS MIGHT BE CONSTRUED AS ABANDONING A CLAIM TO THIS WORK. IN  
 OUR VIEW THE TERM PROPERTY DRAINS DOES NOT DENOTE A DIVISION OF THE CON-  
 STRUCTION INDUSTRY DETERMINED BY WORK CHARACTERISTICS AND CANNOT THERE-  
 FORE BE VIEWED AS A SECTOR. WHETHER A PROPERTY DRAIN PROJECT FALLS IN  
 ONE SECTOR OR ANOTHER WILL HAVE TO BE DECIDED ON THE BASIS OF THE FACTS  
 IN THAT PARTICULAR CASE. ON THE OTHER HAND, INSOFAR AS THESE MAY BE THE  
 SUBJECT OF JURISDICTIONAL DISPUTES, THE ACT PROVIDES A SPECIFIC REMEDY

FOR JURISDICTIONAL DISPUTES AND IT IS DIFFICULT TO SEE WHAT BEARING AN ACCREDITATION DECISION CAN HAVE ON THE RESOLUTION OF SUCH DISPUTES.

6. COUNSEL FOR THE INTERVENER HAS REQUESTED THAT THE BOARD DIVIDE THE RESIDENTIAL SECTOR INTO TWO PARTS AND THAT THE ORDER IN THIS CASE SHOULD BE LIMITED TO ONLY ONE OF THESE PARTS. THE DISTINCTION MADE BY COUNSEL WAS BETWEEN HIGH RISE RESIDENTIAL CONSTRUCTION AND LOW RISE RESIDENTIAL CONSTRUCTION. THE BASIS FOR THIS DISTINCTION IS THAT THE WORK CHARACTERISTICS IN HIGH RISE CONSTRUCTION ARE DIFFERENT FROM THE WORK CHARACTERISTICS IN LOW RISE CONSTRUCTION. IN LIGHT OF THIS DISTINCTION COUNSEL SUGGESTS TWO REASONS WHY THE BOARD SHOULD LIMIT THE ACCREDITATION ORDER TO HIGH RISE RESIDENTIAL CONSTRUCTION AND SHOULD EXCLUDE FROM THE ORDER LOW RISE RESIDENTIAL CONSTRUCTION. THE FIRST REASON IS THAT BECAUSE OF THE DIFFERENCES IN WORK CHARACTERISTICS BETWEEN THESE TWO TYPES OF CONSTRUCTION THERE IS NO COMMUNITY OF INTEREST OR INTERCHANGE BETWEEN EMPLOYERS IN THESE TWO PARTS OF THE RESIDENTIAL SECTOR. THE SECOND REASON FORWARDED BY COUNSEL FOR THE INTERVENER WAS THAT WHEREAS HIGH RISE RESIDENTIAL CONSTRUCTION IS GENERALLY PERFORMED BY "UNIONIZED CONTRACTORS" THE WORK PERFORMED IN LOW RISE RESIDENTIAL CONSTRUCTION IS GENERALLY PERFORMED BY "NON-UNIONIZED CONTRACTORS"; THE AFFECT OF AN ACCREDITATION ORDER COVERING BOTH SECTORS MIGHT VERY WELL LEAD TO A "MISUSE" OF THE ACCREDITATION ORDER FOR THE-PURPOSE OF ORGANIZING UNORGANIZED EMPLOYEES IN LOW RISE RESIDENTIAL CONSTRUCTION.

7. THE APPLICANT AND THE RESPONDENT BOTH TAKE THE POSITION WITH RESPECT TO THESE ARGUMENTS BY THE INTERVENER THAT THERE IS NO VALID DISTINCTION TO BE MADE BETWEEN HIGH RISE AND LOW RISE RESIDENTIAL CONSTRUCTION, AND THAT THE REASONS PROPOSED FOR LIMITING THE ACCREDITATION ORDER TO HIGH RISE CONSTRUCTION ARE NOT VALID. THE APPLICANT FURTHER SUBMITS THAT EVEN IF THE BOARD FINDS THAT THE RESIDENTIAL SECTOR OF THE CONSTRUCTION INDUSTRY IS MADE UP OF TWO SUCH PARTS THEN THE APPLICANT IS ENTITLED TO BE ACCREDITED IN BOTH PARTS.

8. WE WILL FIRST DEAL WITH THE ARGUMENT OF THE INTERVENER THAT BECAUSE OF THE DIFFERENT WORK CHARACTERISTICS THERE IS LITTLE COMMUNITY OF INTEREST BETWEEN THESE TWO TYPES OF CONSTRUCTION. THE BOARD HEARD EVIDENCE THAT IN CERTAIN INSTANCES THERE IS A DIFFERENCE IN THE MATERIALS USED IN THESE TWO TYPES OF CONSTRUCTION. HOWEVER, THE MAJOR DIFFERENCE SEEMS TO BE THAT IN HIGH RISE RESIDENTIAL CONSTRUCTION THE WORK IS DONE BY A LARGER GROUP OF WORKMEN PERFORMING SPECIFIC JOBS AT THE JOB SITE. ON THE OTHER HAND IN LOW RISE RESIDENTIAL CONSTRUCTION IT WOULD APPEAR THAT THE WORK IS DONE BY A FEW MEN WHO PERFORM ALL OF THE JOBS IN A DWELLING UNIT. THERE DOES NOT, HOWEVER, APPEAR TO BE A GREAT DEAL OF DIFFERENCE IN THE NET RESULT OF THE WORK DONE AND IT WOULD APPEAR THAT SKILLED WORKMEN IN THE ONE TYPE OF CONSTRUCTION COULD QUITE READILY PERFORM THE TASKS INVOLVED IN THE OTHER TYPE OF CONSTRUCTION. IT IS NOT THEREFORE CLEAR AS TO WHY THERE IS NO COMMUNITY OF INTEREST AS SUGGESTED BY THE INTERVENER. IF THE REASON IS MERELY THE FACT THAT LOW RISE RESIDENTIAL CONTRACTORS ARE SMALL CONTRACTORS WHO DON'T BID ON HIGH RISE CONSTRUCTION JOBS BECAUSE THEY LACK THE MANPOWER OR CAPITAL, THEN SUCH A

DISTINCTION CANNOT BE THE BASIS FOR FRAGMENTING THE SECTOR. SUCH A DIFFERENCE IN SIZE IS ALREADY PROTECTED BY THE REQUIREMENT THAT AN APPLICANT ASSOCIATION OBTAIN A "DOUBLE MAJORITY" OF THE CONTRACTORS IN AN APPROPRIATE UNIT OF EMPLOYERS FOR COLLECTIVE BARGAINING IN ACCORDANCE WITH SECTION 115(1) OF THE ACT.

9. IF WE EXAMINE THE SECOND ARGUMENT FOR LIMITING THE ACCREDITATION ORDER TO HIGH RISE RESIDENTIAL CONSTRUCTION, NAMELY, THAT THE ORDER MAY BE MISUSED BY THE RESPONDENT AS AN ORGANIZING TOOL, AN ACCREDITATION ORDER ONLY AFFECTS EMPLOYERS WHO HAVE A BARGAINING RELATIONSHIP WITH THE TRADE UNION WITH RESPECT TO WHICH THE EMPLOYERS' ORGANIZATION IS AN ACCREDITED EMPLOYERS' ORGANIZATION. IT IS TRUE THAT THE ACT PROVIDES THAT ANY CONTRACTORS FOR WHOM THAT TRADE UNION OBTAINS A CERTIFICATE AS THE BARGAINING AGENT OF ITS EMPLOYEES IS BY THE OPERATION OF SECTION 116 BOUND BY ANY COLLECTIVE AGREEMENT IN EXISTENCE BETWEEN THE ACCREDITED EMPLOYERS' ORGANIZATION AND THE TRADE UNION. HOWEVER, WE CAN SEE NO DIFFERENCE BETWEEN THE POSITION OF THE MEMBERS OF THE INTERVENER WHO ARE "UNORGANIZED" AND ANY OTHER EMPLOYER IN ANY OTHER SECTOR WHERE AN ACCREDITATION ORDER IS ISSUED. INDEED, GIVEN THE CLEAR LANGUAGE OF SUBSECTION 4 OF SECTION 116 OF THE ACT WE CAN ONLY CONCLUDE THAT SUCH A RESULT WAS CONTEMPLATED BY THE LEGISLATURE.

10. IN VIEW OF THE FOREGOING WE DO NOT SEE ANY MERIT IN THE ARGUMENTS FOR LIMITING THE ACCREDITATION ORDER TO ONE PART OF THE RESIDENTIAL SECTOR OF THE CONSTRUCTION INDUSTRY. HOWEVER WE ARE ALSO OF THE OPINION THAT THE DISTINCTION BETWEEN HIGH RISE RESIDENTIAL CONSTRUCTION AND LOW RISE RESIDENTIAL CONSTRUCTION HAS NOT BEEN MADE IN SUCH A MANNER AS TO CONVINCE THE BOARD THAT THE RESIDENTIAL SECTOR SHOULD BE DIVIDED INTO TWO SUCH PARTS. INDEED, COUNSEL FOR THE INTERVENER FOUND IT VERY DIFFICULT TO SUGGEST ANYTHING OTHER THAN A CRITERIA WHICH WAS ADMITTEDLY ARBITRARY IN DISTINGUISHING BETWEEN THESE TWO PARTS OF THE RESIDENTIAL SECTOR. THE WITNESS CALLED BY THE INTERVENER SUGGESTS THAT THE BEST CRITERION WAS PROBABLY WHETHER OR NOT THERE WAS AN ELEVATOR IN THE BUILDING. THUS, THOSE BUILDINGS WITHOUT ELEVATORS WERE LOW RISE RESIDENTIAL CONSTRUCTION WHEREAS THOSE WITH AN ELEVATOR WERE HIGH RISE RESIDENTIAL CONSTRUCTION. IT WAS NOT MADE CLEAR WHAT AN ELEVATOR HAD TO DO WITH DISTINGUISHING BETWEEN THE WORK CHARACTERISTICS OF THESE TWO TYPES OF CONSTRUCTION. FURTHER, THE EVIDENCE TENDERED IN SUPPORT OF THIS DISTINCTION WAS NOT SUCH AS TO SHOW AN OVERWHELMING DIFFERENCE BETWEEN THE INSTALLATION OF PLUMBING IN A HOUSE AND INSTALLATION OF PLUMBING IN AN APARTMENT. WE ARE OF THE OPINION THAT UNLESS THERE ARE CLEAR AND COMPELLING REASONS TO DIVIDE A SECTOR INTO PARTS THE BOARD OUGHT NOT TO UNNECESSARILY FRAGMENT THE SECTORS OF THE CONSTRUCTION INDUSTRY SET OUT IN CLAUSE (E) OF SECTION 116 OF THE ACT.

11. EVEN IF THE BOARD WERE TO ALLOW THE DISTINCTION PROPOSED BY THE INTERVENER WE STILL CANNOT ACCEDE TO THE INTERVENER'S REQUEST TO LIMIT THE UNIT OF EMPLOYERS TO HIGH RISE RESIDENTIAL CONSTRUCTION. THE SCHEDULES FILED BY THE INDIVIDUAL EMPLOYERS SERVED WITH NOTICE IN THIS APPLICATION INDICATE THAT AT LEAST FIVE OF THESE EMPLOYERS WERE PERFORMING WORK IN WHAT WOULD APPEAR TO BE LOW RISE RESIDENTIAL CONSTRUCTION (HOUSE BUILDING).



SINCE IT APPEARS THAT THESE EMPLOYERS ARE REPRESENTED BY THE APPLICANT, THE APPLICANT WOULD BE ENTITLED TO ACCREDITATION WITH RESPECT TO BOTH PARTS OF THE RESIDENTIAL CONSTRUCTION SECTOR AND THERE WOULD BE NO GOOD REASON FOR THE BOARD ISSUING TWO ACCREDITATION ORDERS WITH RESPECT TO TWO PARTS OF THE SAME SECTOR IN THIS ONE DECISION.

12. IN LIGHT OF THE ABOVE CONSIDERATION THE BOARD IS THEREFORE OF THE VIEW THAT THE SECTOR OF THE CONSTRUCTION INDUSTRY APPROPRIATE FOR ACCREDITATION IN THIS APPLICATION IS THE RESIDENTIAL SECTOR. THE BOARD IS FURTHER OF THE OPINION THAT THE GEOGRAPHIC AREA APPROPRIATE FOR ACCREDITATION IS THE AREA IN THE COLLECTIVE AGREEMENT REFERRED TO IN PARAGRAPH 2, SUPRA. THE BOARD THEREFORE FINDS THAT ALL EMPLOYERS OF PLUMBERS AND PLUMBERS' APPRENTICES, STEAMFITTERS AND STEAMFITTERS' APPRENTICES AND WELDERS FOR WHOM THE RESPONDENT HAS BARGAINING RIGHTS IN THE REGIONAL MUNICIPALITY OF YORK, THAT PORTION OF ONTARIO COUNTY LYING WEST OF PICKERING-WHITBY TOWNSHIPS LINE, PEEL COUNTY, THAT PORTION OF HALTON COUNTY LYING SOUTH OF HIGHWAY 401 AND EAST OF THE SEVENTH LINE AND DUFFERIN COUNTY IN THE RESIDENTIAL SECTOR OF THE CONSTRUCTION INDUSTRY, CONSTITUTE A UNIT OF EMPLOYERS APPROPRIATE FOR COLLECTIVE BARGAINING.

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3208-72-R: UNITED TEXTILE WORKERS OF AMERICA (APPLICANT) V. NORFOLK KNITTERS LIMITED (RESPONDENT) V. EMPLOYEES ASSOCIATION OF NORFOLK KNITTERS LIMITED (INTERVENER).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: VERNON A. MUSTARD AND WILLIAM RICHARDSON FOR THE APPLICANT; MICHAEL GORDON AND LEN MENARY FOR THE RESPONDENT; MABEL DIGGINS FOR THE INTERVENER; PAUL HESS FOR THE MINISTRY OF LABOUR.

DECISION OF THE BOARD: APRIL 5, 1973.

1. THIS IS AN APPLICATION FOR CERTIFICATION WHEREIN THE APPLICANT SEEKS TO DISPLACE THE EMPLOYEES OF THE RESPONDENT WHO WERE COVERED BY A COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER. ARTICLE 18 OF THE COLLECTIVE AGREEMENT READS AS FOLLOWS:

ARTICLE 18 - DURATION

THIS AGREEMENT SHALL CONTINUE IN EFFECT UNTIL THE 31ST DAY OF MARCH, 1973, AND SHALL CONTINUE AUTOMATICALLY THEREAFTER FOR ANNUAL PERIODS OF ONE YEAR EACH, UNLESS EITHER PARTY NOTIFIES THE OTHER IN WRITING PRIOR TO THE EXPIRATION DATE THAT IT DESIRES TO AMEND OR TERMINATE THIS AGREEMENT.

## ARTICLE 18.02

NOTICE OF DESIRE TO AMEND THE AGREEMENT MAY ONLY BE GIVEN WITHIN A PERIOD OF NINETY (90) TO SIXTY (60) CALENDAR DAYS PRIOR TO THE EXPIRATION DATE OF THIS AGREEMENT. IF NOTICE OF DESIRE TO AMEND THE AGREEMENT BY EITHER OF THE PARTIES THE OTHER PARTY AGREES TO MEET FOR THE PURPOSE OF NEGOTIATING SUCH AMENDMENTS WITHIN FIFTEEN (15) CALENDAR DAYS FOLLOWING THE DATE OF SUCH NOTICE.

2. NEITHER PARTY TO THE COLLECTIVE AGREEMENT SERVED NOTICE ON THE OTHER WITHIN THE PERIOD OF NINETY TO SIXTY CALENDAR DAYS PRIOR TO THE EXPIRATION DATE OF THE AGREEMENT IN ACCORDANCE WITH THE PROVISION OF ARTICLE 18. HOWEVER, BY REGISTERED LETTER DATED FEBRUARY 9, 1973, THE INTERVENER SERVED NOTICE TO BARGAIN ON THE RESPONDENT.

3. THE RESPONDENT ARGUED THAT SINCE NO NOTICE TO BARGAIN WAS SERVED BETWEEN THE NINETY - SIXTY DAY PERIOD PRECEDING THE EXPIRATION DATE OF THE COLLECTIVE AGREEMENT THE AGREEMENT THEREFORE AUTOMATICALLY RENEWED ITSELF AS OF JANUARY 30, 1973. SINCE THE INSTANT APPLICATION WAS NOT MADE UNTIL FEBRUARY 2, 1973, IT WAS THE RESPONDENT'S POSITION THAT THIS APPLICATION WAS THEREFORE UNTIMELY.

4. HAVING CONSIDERED THE REPRESENTATIONS OF THE PARTIES, THE BOARD IS UNABLE TO ACCEPT THE RESPONDENT'S ARGUMENT THAT THE COLLECTIVE AGREEMENT RENEWED ITSELF AS OF JANUARY 30, 1973. APART FROM ANY CONSIDERATION AS TO THE EFFECT OF SECTION 45(1) OF THE ACT ON THE NOTICE TO BARGAIN THAT WAS SERVED ON THE RESPONDENT ON FEBRUARY 9, 1973, IT IS CLEAR FROM THE PROVISIONS OF ARTICLE 18 THAT IT IS THE INTENT OF THE PARTIES THAT THE AGREEMENT WOULD "CONTINUE AUTOMATICALLY THEREAFTER (I.E. THE 31ST DAY OF MARCH 1973) FOR ANNUAL PERIODS OF ONE YEAR EACH, UNLESS EITHER PARTY NOTIFIES THE OTHER IN WRITING PRIOR TO THE EXPIRATION DATE THAT IT DESIRES TO AMEND OR TERMINATE THIS AGREEMENT." AGAIN, IN ORDER THAT THE COLLECTIVE AGREEMENT WOULD TERMINATE ON A DATE EARLIER THAN THE TERMINATION DATE WHICH APPEARS IN ARTICLE 18.01, THE PARTIES TO THE AGREEMENT WOULD HAVE TO APPLY UNDER THE PROVISIONS OF SECTION 44(3) OF THE ACT FOR CONSENT OF THE BOARD TO THE EARLY TERMINATION OF THEIR AGREEMENT. THIS WAS NOT DONE.

5. AGAIN, APART FROM ANY OTHER CONSIDERATION, THE PROVISIONS OF SECTION 5(4) AND SECTION 5(6) OF THE LABOUR RELATIONS ACT MAKE IT ABUNDANTLY CLEAR THAT, IN THE CIRCUMSTANCES OF THIS CASE, A TRADE UNION MAY APPLY FOR CERTIFICATION AS BARGAINING AGENT OF ANY OF THE EMPLOYEES WHO WERE COVERED BY THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER "ONLY AFTER THE COMMENCEMENT OF THE LAST TWO MONTHS" OF THE OPERATION OF THE COLLECTIVE AGREEMENT. THE COMMENCEMENT OF THE LAST TWO MONTHS OF THE OPERATION OF ANY COLLECTIVE AGREEMENT MUST BE CLEARLY DETERMINED AT THE TIME THE COLLECTIVE AGREEMENT IS SIGNED. IN THIS INSTANCE WE FIND THAT THE LAST TWO MONTHS OF THE COLLECTIVE AGREEMENT WITH WHICH WE ARE HERE CONCERNED WERE THE MONTHS OF FEBRUARY AND MARCH 1973. THE BOARD THEREFORE FINDS THAT THIS APPLICATION IS TIMELY.

6. THE BOARD ACCORDINGLY DIRECTS THE REGISTRAR TO CAUSE THE BALLOTS CAST IN THE PRE-HEARING REPRESENTATION VOTE WHICH WAS TAKEN ON MARCH 6, 1973 TO BE COUNTED AND REPORT TO THE BOARD.

3412-72-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. MORT-LOCK CONSTRUCTION (1963) LIMITED (RESPONDENT) V. UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL UNION 1450 (INTERVENER).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS H. J. F. ADE AND E. BOYER.

APPEARANCES AT THE HEARING: EDWARD VANDERKLOET AND JOHN ADEMA APPEARING FOR THE APPLICANT; NO ONE APPEARING FOR THE RESPONDENT; HAROLD F. CALEY AND DON URGUHART APPEARING FOR THE INTERVENER.

DECISION OF THE BOARD: APRIL 6, 1973.

1. THIS APPLICATION FOR CERTIFICATION WAS FILED ON MARCH 7, 1973.

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4. THE APPLICANT IS SEEKING CERTIFICATION ON BEHALF OF A BARGAINING UNIT OF ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF PETERBOROUGH, VICTORIA AND THE PROVISIONAL COUNTY OF HALIBURTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN.

5. THE RESPONDENT AND THE INTERVENER ARE PARTIES TO A COLLECTIVE AGREEMENT WHICH COVERS THE BARGAINING UNIT FOR WHICH THE APPLICANT IS SEEKING CERTIFICATION. THIS COLLECTIVE AGREEMENT WAS SIGNED ON OCTOBER 11, 1972. ARTICLE 12 OF THIS COLLECTIVE AGREEMENT PROVIDES THAT IT SHALL REMAIN IN FORCE FROM MAY 1, 1972, AND SHALL CONTINUE IN FORCE FROM YEAR TO YEAR THEREAFTER SUBJECT TO NOTICE. THERE WAS ALSO A PRIOR COLLECTIVE AGREEMENT IN FORCE BETWEEN THE RESPONDENT AND THE INTERVENER WHICH EXPIRED ON APRIL 30, 1972 AND WHICH COVERED THE SAME BARGAINING UNIT.

6. THE INTERVENER ADOPTED THE POSITION THAT THE APPLICATION WAS UNTIMELY SINCE IT WOULD EXPIRE ON AUGUST 21, 1973, AND ARGUED THAT THE CURRENT COLLECTIVE AGREEMENT COMMENCED ON AUGUST 21, 1972, THE EARLIEST DATE FROM WHICH THE COLLECTIVE AGREEMENT SPECIFIED WAGE RATES.

7. UPON CONSIDERING THE CURRENT COLLECTIVE AGREEMENT AS A WHOLE, THE EVIDENCE BEFORE IT AND THE REPRESENTATIONS OF THE PARTIES, THE BOARD FINDS THAT THE COLLECTIVE AGREEMENT ENVISAGES AN OPERATIVE EFFECT PRIOR TO ITS DATE OF EXECUTION OF OCTOBER 11, 1972, AND THAT IT COMMENCED ITS OPERATION ON MAY 1, 1972. REFERENCE IS MADE TO THE R & R PRE-CAST ERECTORS LIMITED CASE, [1968] OLRB REP. 172 AND TO THE R.C.A. VICTOR COMPANY LIMITED CASE 56 CLLC ¶ 18,045. HAVING REGARD TO THE PROVISIONS OF SECTION



5(4) OF THE LABOUR RELATIONS ACT, THE BOARD FINDS THAT THIS APPLICATION IS TIMELY. IN MAKING THIS DECISION, THE BOARD HAS NOT TAKEN INTO ACCOUNT THE REPRESENTATIONS OF THE APPLICANT WHICH WERE CONTAINED IN A LETTER TO THE BOARD DATED APRIL 4, 1973.

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2864-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) v. HASHMAN CONSTRUCTION LIMITED (RESPONDENT) v. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (INTERVENER).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS H. J. F. ADE AND E. BOYER.

APPEARANCES AT THE HEARING: L. A. MACLEAN, W. MORRIS AND F. J. LEACH FOR THE APPLICANT; JOHN P. SANDERSON AND KEITH WARD FOR THE RESPONDENT; R. KOSKIE AND M. O'BRIEN FOR THE INTERVENER.

DECISION OF THE BOARD: APRIL 6, 1973.

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4. THE APPLICANT IS SEEKING CERTIFICATION ON BEHALF OF A BARGAINING UNIT OF EMPLOYEES DESCRIBED AS:

ALL CARPENTERS AND CARPENTERS APPRENTICES IN THE EMPLOY OF THE (RESPONDENT), SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMEN, WORKING IN ONTARIO LABOUR RELATIONS BOARD AREA #8.

5. THE RESPONDENT HAS SUGGESTED THAT THE UNIT OF EMPLOYEES APPROPRIATE FOR COLLECTIVE BARGAINING IS:

CARPENTERS OR CARPENTERS' APPRENTICES ON THE PAYROLL OF HASHMAN CONSTRUCTION LIMITED AT JOBSITES WHICH ARE RECOGNIZED AS BEING "COMMERCIAL PROJECTS" BY EXCLUDING JOBSITES WHICH ARE RECOGNIZED AS "RESIDENTIAL OR NON-COMMERCIAL PROJECTS" WITHIN THE AREA DESIGNATED AS "AREA 8".

6. THE JOB SITES AFFECTED BY THIS APPLICATION ARE:

1. SHOPPING CENTRE, ELLESMERE ROAD & McCOWAN ROAD, SCARBOROUGH, ONTARIO.
2. SENIOR CITIZEN APARTMENT, FINCH AVENUE WEST & PELICAN, DOWNSVIEW, ONTARIO.

3. HY'S RESTAURANT & OFFICE BUILDING,  
YORKVILLE & AVENUE ROAD, TORONTO 5, ONTARIO.

7. THE INTERVENER SUBMITTED THAT THERE WAS A COLLECTIVE AGREEMENT MADE ON MAY 1, 1970 BETWEEN THE METROPOLITAN TORONTO APARTMENT BUILDERS ASSOCIATION (HEREINAFTER REFERRED TO AS THE 'ASSOCIATION') AND ITSELF. IT WAS THE POSITION OF THE INTERVENER THAT BY REASON OF THIS COLLECTIVE AGREEMENT, WHICH IT ALLEGED TO BE BINDING ON THE RESPONDENT, THE APPLICATION WAS UNTIMELY AT LEAST AS IT MIGHT AFFECT THOSE OF THE RESPONDENT'S EMPLOYEES COVERED BY THE SAID COLLECTIVE AGREEMENT AND FOR WHOM THE APPLICANT IS SEEKING CERTIFICATION.

8. THE RESPONDENT AGREED THAT IT WAS A PARTY TO THIS COLLECTIVE AGREEMENT BY VIRTUE OF ITS MEMBERSHIP IN THE ASSOCIATION AND ADOPTED THE POSITION THAT ALL OF ITS EMPLOYEES WHO WERE EMPLOYED ON RESIDENTIAL PROJECTS ARE COVERED BY THIS COLLECTIVE AGREEMENT.

9. THE APPLICANT ADOPTED THE POSITION THAT THE EMPLOYEES AFFECTED BY THIS APPLICATION ARE CARPENTERS AND THAT THEY ARE NOT COVERED BY THE COLLECTIVE AGREEMENT BETWEEN THE ASSOCIATION AND THE INTERVENER.

10. THE RESPONDENT FILED A LIST OF EMPLOYEES ON SCHEDULE A CONTAINING THE NAMES OF THIRTEEN PERSONS CLASSIFIED AS CARPENTERS. THE RESPONDENT INDICATED ON THIS SCHEDULE THAT SIX OF THESE CARPENTERS WERE EMPLOYED ON NON-COMMERCIAL PROJECTS AND THAT THE OTHER SEVEN CARPENTERS WERE EMPLOYED ON COMMERCIAL PROJECTS.

11. ARTICLE 1.01 OF THIS COLLECTIVE AGREEMENT STATES:

"EACH OF THE EMPLOYERS RECOGNIZES THE UNION AS THE COLLECTIVE BARGAINING AGENT FOR ALL CONSTRUCTION EMPLOYEES, WHOSE CLASSIFICATION FALL INTO A CATEGORY LISTED ON SCHEDULE 'A' ATTACHED HERETO, OF THE MEMBERS OF THE ASSOCIATION WHOSE NAMES APPEAR ON THE ATTACHED SCHEDULE OF EMPLOYERS, WHILE WORKING WITHIN THE AREA KNOWN AS GEOGRAPHICAL AREA NUMBER 8 ESTABLISHED AND USED BY THE ONTARIO LABOUR RELATIONS BOARD IN MATTERS OF CERTIFICATION AND AS FOLLOWS: METROPOLITAN TORONTO, THE COUNTIES OF YORK AND PEEL, THE TOWNSHIP OF ESQUESING, AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON, AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO."

12. ANNEXED TO THIS COLLECTIVE AGREEMENT AND FORMING PART OF IT IS A DOCUMENT ENTITLED SCHEDULE "A". ITEM FIVE OF THIS SCHEDULE STATES:

5. WAGES AND CLASSIFICATIONS

EMPLOYEES COVERED BY THIS AGREEMENT SHALL BE

ALL CONSTRUCTION LABOURERS EMPLOYED IN ACCORDANCE WITH ARTICLE 1.01 HEREOF, SAVE AND EXCEPT EMPLOYEES EMPLOYED AS OPERATING ENGINEERS, NON-WORKING FOREMEN, WATCHMEN AND OPERATORS OF PERSONNEL HOISTS. FOR THE PURPOSES OF THIS AGREEMENT, CONSTRUCTION LABOURERS SHALL BE THOSE EMPLOYEES ENGAGED IN CONSTRUCTION WORK ON RESIDENTIAL CONSTRUCTION PROJECTS BEING CONSTRUCTED BY THE EMPLOYER, AND AS DEFINED IN ARTICLE 1.01 HEREOF, WITHIN THE GEOGRAPHIC AREA SET OUT IN ARTICLE 1.01 HEREOF, UP TO THE TAKEOVER OF THE SAID CONSTRUCTION PROJECT OR PART THEREOF BY MAINTENANCE AND MANAGEMENT EMPLOYEES OF SOME OTHER EMPLOYER. FOR THE PURPOSE OF CLARIFICATION CONSTRUCTION LABOURERS SHALL BE GENERALLY THOSE EMPLOYEES ENGAGED IN PART OR ALL OF THE FOLLOWING WORK OR JOB FUNCTIONS BUT SHALL IN NO WAY BE LIMITED TO THE FOLLOWING WHICH IS INTENDED AS A GENERAL DESCRIPTION ONLY:

BENEATH THIS THERE FOLLOWS A LIST OF WORK OR JOB FUNCTIONS AND A LIST OF WAGE RATES.

13. THE RESPONDENT AND THE INTERVENER STATED THAT THE BARGAINING UNIT APPROPRIATE FOR COLLECTIVE BARGAINING OUGHT TO BE DESCRIBED IN TERMS OF CARPENTERS EMPLOYED ON NON-RESIDENTIAL PROJECTS. IN THIS CASE, THE RESPONDENT AND THE INTERVENER ARGUED, THERE WOULD BE SEVEN CARPENTERS APPROPRIATE FOR INCLUSION IN SUCH A BARGAINING UNIT.

14. THE INTERVENER, WHILE IT DID NOT CHALLENGE THE LIST OF EMPLOYEES FILED BY THE RESPONDENT, ADOPTED THE POSITION THAT THE EMPLOYEES AFFECTED BY THIS APPLICATION WHO WORKED ON RESIDENTIAL CONSTRUCTION WERE CONSTRUCTION LABOURERS. ALTERNATIVELY, THE INTERVENER ARGUED THAT IF THESE EMPLOYEES WHO WORKED ON RESIDENTIAL CONSTRUCTION WERE CARPENTERS, THEY WERE DOING THE WORK OF CONSTRUCTION LABOURERS.

15. THE BOARD HAS CONSIDERED THE EVIDENCE BEFORE IT AND THE REPRESENTATIONS OF THE PARTIES. ARTICLE 1.01 OF THE COLLECTIVE AGREEMENT STATES THAT "EACH OF THE EMPLOYERS RECOGNIZES THE UNION AS THE COLLECTIVE BARGAINING AGENT FOR ALL CONSTRUCTION EMPLOYEES, WHOSE CLASSIFICATION FALL INTO A CATEGORY LISTED ON SCHEDULE 'A' ATTACHED HERETO, OF THE MEMBERS OF THE ASSOCIATION WHOSE NAMES APPEAR ON THE ATTACHED SCHEDULE OF EMPLOYERS, WHILE WORKING WITHIN THE AREA KNOWN AS GEOGRAPHICAL AREA NUMBER 8 ESTABLISHED AND USED BY THE ONTARIO LABOUR RELATIONS BOARD IN MATTERS OF CERTIFICATION AND AS FOLLOWS: ....."

16. ITEM FIVE OF SCHEDULE "A" OF THE COLLECTIVE AGREEMENT STATES: "EMPLOYEES COVERED BY THIS AGREEMENT SHALL BE ALL CONSTRUCTION LABOURERS EMPLOYED IN ACCORDANCE WITH ARTICLE 1.01 HEREOF, ....."



17. HAVING REGARD TO THE PROVISIONS OF ARTICLE 1.01 OF THE COLLECTIVE AGREEMENT AND ITEM 5 OF SCHEDULE "A" OF THE COLLECTIVE AGREEMENT BETWEEN THE METROPOLITAN TORONTO APARTMENT BUILDERS ASSOCIATION AND THE INTERVENER, THE BOARD FINDS THAT THIS COLLECTIVE AGREEMENT COVERS CONSTRUCTION LABOURERS ENGAGED IN CONSTRUCTION WORK ON RESIDENTIAL PROJECTS WITHIN GEOGRAPHIC AREA NUMBER 8. WE FIND THAT THIS COLLECTIVE AGREEMENT DOES NOT COVER CARPENTERS AND CARPENTERS' APPRENTICES.

18. ACCORDINGLY, THIS COLLECTIVE AGREEMENT IS NOT A BAR TO THIS APPLICATION. HOWEVER, EVEN IF THE CONTENTION OF THE INTERVENER IS CORRECT, AND, THE PERSONS REGARDED AS CARPENTERS BY THE APPLICANT ON WHAT IS ALLEGED TO BE THE RESIDENTIAL PROJECTS ARE COVERED BY THE COLLECTIVE AGREEMENT BY VIRTUE OF THE WORK THEY ALLEGEDLY PERFORMED OR BECAUSE THEY WERE IN REALITY CONSTRUCTION LABOURERS, THE APPLICANT WOULD NEVERTHELESS BE ENTITLED TO CERTIFICATION. THE APPLICANT FILED EVIDENCE OF MEMBERSHIP ON BEHALF OF FIVE OF THE SIX CARPENTERS SAID TO HAVE BEEN EMPLOYED ON NON-COMMERCIAL PROJECTS AND ALSO ON BEHALF OF FIVE OF THE SEVEN CARPENTERS SAID TO HAVE BEEN EMPLOYED ON COMMERCIAL PROJECTS.

19. IT IS THEREFORE APPARENT THAT THE APPLICANT HAS THE REQUISITE NUMBER OF MEMBERS WITHIN THE LIST OF CARPENTERS FILED ON SCHEDULE A BY THE RESPONDENT WHETHER THIS LIST APPROPRIATELY CONSISTS OF SEVEN CARPENTERS OR THIRTEEN CARPENTERS.

20. HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES, THE BOARD SEES NO REASON TO RESTRICT THE APPROPRIATE BARGAINING UNIT TO COMMERCIAL PROJECTS AS REQUESTED BY THE RESPONDENT AND THE INTERVENER. THE BOARD THEREFORE FINDS THAT THE APPLICANT IS ENTITLED TO ITS REGULAR CRAFT UNIT IN ALL THE CIRCUMSTANCES OF THIS APPLICATION. ACCORDINGLY, THE BOARD FURTHER FINDS THAT ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

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22. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

3447-72-R: PRINTING SPECIALTIES AND PAPER PRODUCTS UNION LOCAL 540 (APPLICANT) v. DEMOCON LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

DECISION OF THE BOARD:

APRIL 9, 1973.

1. BY LETTER DATED APRIL 3, 1973 THE SOLICITORS FOR THE OBJECTORS WROTE TO THE BOARD REQUESTING THE BOARD TO RECONSIDER ITS DECISION IN THIS MATTER. MR. RECKLER HAD APPARENTLY ADVISED THE SOLICITORS THAT HE HAD RECEIVED NO NOTICE OF THE HEARING IN THIS MATTER NOR HAD HE BEEN ADVISED THAT IT WAS NECESSARY FOR HIM TO ATTEND AT THE HEARING. THE LETTER OF APRIL 3, 1973 READS IN PART AS FOLLOWS:

MR. RECKLER IS NOT ONLY UPSET AT THE FACT THAT HE HAS NOT HAD THE OPPORTUNITY TO GIVE EFFECT TO THE PETITION WHICH HE SUBMITTED, BUT HE HAS TAKEN STRONG OBJECTION TO THE ALLEGATIONS MADE BY THE SOLICITORS FOR THE UNION WHICH HE HAS INFORMED ARE UTTERLY FALSE. I MIGHT SAY THAT MR. RECKLER IS OF GERMAN DESCENT AND THERE IS SOME DEGREE OF DIFFICULTY WITH RESPECT TO COMMUNICATIONS, HOWEVER, NOT TO THE EXTENT THAT HAD HE BEEN GIVEN ANY POSITIVE INDICATION OF THE NECESSITY TO ATTEND AT THE MEETING, THAT HE WOULD NOT HAVE UNDERSTOOD THIS. QUITE TO THE CONTRARY, HAD HE BEEN GIVEN SUCH A NOTICE, AS I HAVE SAID BEFORE, HE WOULD MOST CERTAINLY HAVE BEEN IN ATTENDANCE.

2. AT THE HEARING IN THIS MATTER ON MARCH 29, 1973 NO ONE APPEARED FOR THE OBJECTORS. WHEN THE APPLICANT ATTEMPTED TO ADDUCE EVIDENCE WITH RESPECT TO ITS ALLEGATIONS OF IMPROPER CONDUCT WITH RESPECT TO THE MANNER IN WHICH THE NOTICE OF OBJECTIONS AND DESIRE TO MAKE REPRESENTATIONS WAS ORIGINATED AND SIGNED, THE BOARD ADVISED THE APPLICANT THAT IN VIEW OF THE FACT THAT NO ONE APPEARED AT THE HEARING TO TESTIFY CONCERNING THE ORIGINATION OF THE MATERIAL FILED AND THE MANNER IN WHICH EACH OF THE SIGNATURES WAS OBTAINED, THE BOARD WAS NOT PREPARED TO GIVE EFFECT TO THE DOCUMENT WHICH WAS FILED IN OPPOSITION TO THIS APPLICATION. THE BOARD ACCORDINGLY INFORMED THE APPLICANT THAT NO PURPOSE WOULD BE SERVED BY INQUIRING INTO THE ALLEGATIONS WHICH WERE MADE IN OPPOSITION TO THE STATEMENT OF OBJECTIONS.

3. THE NOTICE TO EMPLOYEES OF APPLICATION FOR CERTIFICATION AND OF HEARING (FORM 5) WHICH WAS POSTED ON THE RESPONDENT'S PREMISES ON MARCH 20, 1973 READS IN PART AS FOLLOWS:

3. THE HEARING OF THE APPLICATION BY THE BOARD WILL TAKE PLACE AT ITS BOARD ROOM, 400 UNIVERSITY AVE., TORONTO 2, ONTARIO ON THURSDAY THE 29TH DAY OF MARCH 1973, AT 9:30 O'CLOCK IN THE FORENOON E.S.T.

8. ANY EMPLOYEE, OR GROUP OF EMPLOYEES, WHO HAS INFORMED THE BOARD IN WRITING OF HIS OR THEIR DESIRE IN ACCORDANCE WITH PARAGRAPHS 5 AND 6 MAY ATTEND AND BE HEARD AT THE HEARING IN PERSON OR BY A REPRESENTATIVE. ANY EMPLOYEE OR REPRESENTATIVE WHO APPEARS AT THE HEARING WILL BE REQUIRED TO

TESTIFY, OR PRODUCE A WITNESS OR WITNESSES WHO WILL BE ABLE TO TESTIFY FROM HIS OR THEIR PERSONAL KNOWLEDGE AND OBSERVATION, AS TO (A) THE CIRCUMSTANCES CONCERNING THE ORIGINATION OF THE MATERIAL FILED, AND (B) THE MANNER IN WHICH EACH OF THE SIGNATURES WAS OBTAINED.

THE BOARD MAY DISPOSE OF THE APPLICATION WITHOUT FURTHER NOTICE AND WITHOUT CONSIDERING THE STATEMENT OF DESIRE OF ANY PERSON WHO FAILS TO ATTEND.\*

\*EXPLANATORY NOTE: WHERE EMPLOYEES FAIL TO ATTEND IN PERSON OR BY A REPRESENTATIVE OR TO TESTIFY OR PRODUCE WITNESSES TO TESTIFY AS PROVIDED IN PARAGRAPH 8 ABOVE, THE BOARD NORMALLY DOES NOT ACCEPT THE STATEMENT OF DESIRE AS CASTING DOUBT ON THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT.

4. THE BOARD IS OF THE VIEW THAT THE ABOVE PROVISIONS OF FORM 5 NOT ONLY MAKE IT ABANDANTLY CLEAR THAT THE HEARING WAS TO BE HELD ON MARCH 29, 1973 AT THE TIME AND PLACE THEREIN STATED BUT THAT IT WAS ESSENTIAL THAT A WITNESS OR WITNESSES ATTEND AT THE HEARING TO TESTIFY "FROM HIS OR THEIR PERSONAL KNOWLEDGE AND OBSERVATION, AS TO (A) THE CIRCUMSTANCES CONCERNING THE ORIGINATION OF THE MATERIAL FILED, AND (B) THE MANNER IN WHICH EACH OF THE SIGNATURES WAS OBTAINED". THE EMPLOYEES WERE FURTHER ADVISED IN THE NOTICE (AND THIS ADVICE IS CONTAINED IN BOLD TYPE) THAT "THE BOARD MAY DISPOSE OF THE APPLICATION WITHOUT FURTHER NOTICE AND WITHOUT CONSIDERING THE STATEMENT OF DESIRE OF ANY PERSON WHO FAILS TO ATTEND". THIS STATEMENT IS FOLLOWED BY AN EXPLANATORY NOTE WHICH MAKES IT ABUNDANTLY CLEAR THAT THE BOARD DOES NOT NORMALLY ACCEPT THE STATEMENT OF DESIRE AS CASTING DOUBT ON THE MEMBERSHIP EVIDENCE WHICH HAS BEEN FILED BY THE APPLICANT IN INSTANCES WHERE EMPLOYEES FAIL TO ATTEND IN PERSON OR BY A REPRESENTATIVE OR TO TESTIFY AS TO THE ORIGINATION AND CIRCULATION OF THE DOCUMENT FILED IN OPPOSITION TO THE APPLICATION.

5. IT IS CLEAR FROM THE LETTER OF APRIL 3, 1973, REFERRED TO ABOVE, THAT THE ONLY EXPLANATION FOR THE FACT THAT MR. RECKLER FAILED TO ATTEND THE HEARING ON MARCH 29 IS THAT HE DID NOT TAKE PROPER NOTICE OF THE CLEAR PROVISIONS CONTAINED IN FORM 5 WHICH WAS POSTED ON THE RESPONDENT'S PREMISES. FORM 5 NOT ONLY STATES THAT WITNESSES MUST ATTEND THE HEARING TO TESTIFY CONCERNING THE MATTERS THEREIN REFERRED TO BUT IN ADDITION FORM 5 MAKES IT CLEAR THAT THE BOARD MAY DISPOSE OF THE APPLICATION WITHOUT CONSIDERING THE STATEMENT OF DESIRE. IN AN ABUNDANCE OF CAUTION FORM 5 FURTHER STATES BY WAY OF AN EXPLANATORY NOTE TO THE EMPLOYEES THAT THE BOARD DOES NOT ACCEPT THE STATEMENT OF DESIRE AS CASTING DOUBT ON THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT WHERE WITNESSES ARE NOT CALLED TO TESTIFY CONCERNING THE MATTERS REFERRED TO IN PARAGRAPH 8 OF FORM 5. WE ARE OF THE VIEW THAT EVEN THOUGH THE STATUTORY POWERS PROCEDURE ACT, 1971, CHAPTER 47, SECTION 6 DOES NOT PRESENTLY APPLY TO THE LABOUR RELATIONS BOARD THAT THE REQUIREMENTS OF THAT ACT IN SO FAR AS IT RELATES TO THE ISSUE IN THIS MATTER HAVE BEEN SUBSTANTIALLY SATISFIED BY THE PROVISIONS



OF THE NOTICE TO EMPLOYEES OF APPLICATION FOR CERTIFICATION AND OF HEARING (FORM 5) WHICH WAS POSTED ON THE RESPONDENT'S PREMISES IN THIS MATTER.

6. WE ARE FURTHER SATISFIED THAT THERE IS NOTHING CONTAINED IN THE LETTER OF APRIL 3, 1973 WHICH OUGHT TO CAUSE THE BOARD TO VARY OR REVOKE ITS DECISION WHICH WAS ANNOUNCED AT THE HEARING ON MARCH 29, 1973 TO REFUSE TO GIVE EFFECT TO THE STATEMENT OF OBJECTIONS FILED BY SOME OF THE EMPLOYEES OF THE RESPONDENT IN THIS MATTER. THE REQUEST MADE ON BEHALF OF THE OBJECTORS AS CONTAINED IN THE LETTER OF APRIL 3, 1973 IS THEREFORE DENIED.

3322-72-M: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, LOCAL 1285 (U.A.W.) (APPLICANT) V. AMERICAN MOTORS (CANADA) LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS D. B. ARCHER AND W. H. WIGHTMAN.

APPEARANCES AT THE HEARING: L. A. MACLEAN, GORDON PARKER AND JIM PETERS FOR THE APPLICANT; DONALD J.M. BROWN AND W. MC MENEMY FOR THE RESPONDENT.

DECISION OF J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBER D. B. ARCHER: APRIL 5, 1973.

1. THE APPLICANT HAS APPLIED FOR RELIEF UNDER SECTION 37(3) OF THE LABOUR RELATIONS ACT.

2. THE RELEVANT PROVISIONS OF THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES ARE AS FOLLOWS. ARTICLE 3 OF THE COLLECTIVE AGREEMENT, AFTER SETTING OUT A THREE-STEP GRIEVANCE PROCEDURE, PROVIDES:

### ARTICLE 3 GRIEVANCE PROCEDURE

SECTION 3:05: IF SUCH GRIEVANCE IS NOT SATISFACTORILY SETTLED WITHIN THREE (3) WORKING DAYS AFTER THE MEETING BETWEEN THE UNION REPRESENTATIVES AND THE COMPANY REPRESENTATIVES HEREIN PROVIDED FOR IN SECTION 3:04 THEN THE GRIEVANCE PROCEDURE SHALL BE REFERRED TO AN ARBITRATION BOARD AS PROVIDED FOR IN SECTION 3:06, EXCEPT THAT EITHER PARTY MAY REQUEST AND SHALL BE GRANTED AN EXTENSION ON A GRIEVANCE FOR SUCH REASONABLE PERIOD THAT WILL PERMIT THE UNION PRESIDENT, UNIT CHAIRMAN, AND, IF INVOLVED, THE SKILLED TRADES COMMITTEEMAN, IF THEY SO DESIRE, TO CALL IN AN INTERNATIONAL REPRESENTATIVE AND THE GENERAL PLANT MANAGER, IF HE SO DESIRES, TO CALL IN ANY OF THE COMPANY REPRESENTATIVES TO ASSIST IN THE SETTLEMENT OF THE GRIEVANCE.

ANY GRIEVANCE NOT APPEALED FROM AN ANSWER AT ONE STEP OF THE GRIEVANCE PROCEDURE TO THE NEXT STEP IN ACCORDANCE WITH THE PRESCRIBED TIME LIMITS SHALL BE CONSIDERED ABANDONED BY THE UNION.

SECTION 3:06: WHENEVER EITHER PARTY TO THIS AGREEMENT DESIRES TO SUBMIT ANY GRIEVANCE TO ARBITRATION, WRITTEN NOTICE SHALL BE GIVEN WITHIN TEN (10) WORKING DAYS OF THE LAST REPLY TO THE OTHER PARTY FORMALLY STATING THE SUBJECT OF THE GRIEVANCE AND AT THE SAME TIME NOMINATING AN ARBITRATOR. WITHIN SEVEN (7) DAYS AFTER RECEIPT OF SUCH NOTICE, THE OTHER PARTY SHALL NAME AN ARBITRATOR. THE ARBITRATORS REPRESENTING THE TWO PARTIES SHALL MEET IMMEDIATELY AND IF THEY FAIL TO AGREE UPON A SETTLEMENT OF THE GRIEVANCE WITHIN FORTY-EIGHT (48) HOURS AFTER THEY HAVE FIRST MET THEN THEY WILL ATTEMPT TO AGREE UPON A CHAIRMAN OF THE ARBITRATION BOARD AND FAILING SUCH AGREEMENT, THE MINISTER OF LABOUR FOR THE PROVINCE OF ONTARIO SHALL BE REQUESTED TO NAME SUCH CHAIRMAN. ...

EFFECTIVE FOR GRIEVANCES ARISING ON OR AFTER APRIL 19TH, 1971, THE ABOVE PROCEDURE SHALL BE AMENDED BY DELETION OF THE ARBITRATION BOARD PROCEDURE AND SUBSTITUTING IN ITS PLACE A SINGLE ARBITRATOR. THE COMPANY AND UNION WILL EACH DESIGNATE THEIR RESPECTIVE SINGLE OFFICE AND THE INCUMBENTS WILL ATTEMPT TO AGREE UPON AN ARBITRATOR FOR EACH CASE AS IT ARISES AND, FAILING AGREEMENT, THE MINISTER OF LABOUR SHALL BE REQUESTED TO NAME SUCH ARBITRATOR.

3. ARTICLE 11 OF THE COLLECTIVE AGREEMENT PROVIDES FOR THE ESTABLISHMENT OF A PROGRAM OF INSURANCE WHICH MAY BE PLACED WITH ONE OR MORE CARRIERS OR THE COMPANY MAY SET UP A SELF-INSURANCE FUND. CERTAIN BENEFITS ARE DESCRIBED AND PROVISIONS ARE MADE FOR COMPANY AND EMPLOYEE CONTRIBUTIONS. SECTION 11.11 READS IN PART AS FOLLOWS:

#### SECTION 11:11: ADMINISTRATION

THE COMPANY SHALL BE RESPONSIBLE FOR THE ADMINISTRATION OF THE ENTIRE PROGRAMME COVERED BY THIS AGREEMENT. ...

IT IS UNDERSTOOD THAT THE GRIEVANCE PROCEDURE OF ANY COLLECTIVE BARGAINING AGREEMENT BETWEEN THE COMPANY AND THE UNION SHALL NOT APPLY TO THIS PROGRAMME OR TO ANY INSURANCE

CONTRACT OR SIMILAR DOCUMENT MADE IN CONNECTION THEREWITH.

4. IT WAS THE COMPANY'S POSITION THAT SINCE SECTION 11.11 OF THE COLLECTIVE AGREEMENT PROVIDES THAT THE GRIEVANCE PROCEDURE SET OUT IN THE COLLECTIVE AGREEMENT SHALL NOT APPLY TO THE INSURANCE PROGRAM REFERRED TO IN ARTICLE 11, ACCORDINGLY NO DISPUTE WITH RESPECT TO THE INSURANCE PROGRAM IS ARBITRABLE. THE COMPANY ARGUED THAT IT WOULD BE PLACED IN AN UNTENABLE POSITION IF OHIP WERE TO DENY A CLAIM MADE BY AN EMPLOYEE AND IF THE EMPLOYEE HAD THE RIGHT TO FORCE THE COMPANY TO ARBITRATE THE DISPUTE.

5. SECTIONS 37(1) AND 37(3) OF THE LABOUR RELATIONS ACT READ AS FOLLOWS:

37(1) EVERY COLLECTIVE AGREEMENT SHALL PROVIDE FOR THE FINAL AND BINDING SETTLEMENT BY ARBITRATION, WITHOUT STOPPAGE OF WORK, OF ALL DIFFERENCES BETWEEN THE PARTIES ARISING FROM THE INTERPRETATION, APPLICATION, ADMINISTRATION OR ALLEGED VIOLATION OF THE AGREEMENT, INCLUDING ANY QUESTION AS TO WHETHER A MATTER IS ARBITRABLE.

37(3) IF, IN THE OPINION OF THE BOARD, ANY PART OF THE ARBITRATION PROVISION, INCLUDING THE METHOD OF APPOINTMENT OF THE ARBITRATOR OR ARBITRATION BOARD, IS INADEQUATE, OR IF THE PROVISION SET OUT IN SUBSECTION 2 IS ALLEGED BY EITHER PARTY TO BE UNSUITABLE, THE BOARD MAY, ON THE REQUEST OF EITHER PARTY, MODIFY THE PROVISION SO LONG AS IT CONFORMS WITH SUBSECTION 1, BUT, UNTIL SO MODIFIED THE ARBITRATION PROVISION IN THE COLLECTIVE AGREEMENT OR IN SUBSECTION 2, AS THE CASE MAY BE, APPLIES.

6. IT IS READILY APPARENT THAT SECTION 37(1) PROVIDES THAT "ALL DIFFERENCES" BETWEEN THE PARTIES ARISING UNDER A COLLECTIVE AGREEMENT INCLUDING ANY QUESTION AS TO WHETHER A MATTER IS ARBITRABLE MUST BE SETTLED BY ARBITRATION.

7. THE REAL ISSUE IN THIS MATTER THEN IS WHETHER A DIFFERENCE CAN ARISE UNDER THE COLLECTIVE AGREEMENT WITH RESPECT TO THE INSURANCE PROGRAM AS SET OUT IN ARTICLE 11. IF EFFECT IS GIVEN TO SECTION 37(1) OF THE ACT, AN ARBITRATOR MUST DETERMINE WHETHER THE PARTIES HAVE SO FORMULATED THEIR AGREEMENT WITH RESPECT TO THE INSURANCE PROGRAM THAT NO DISPUTE CAN ARISE CONCERNING THE INSURANCE PROGRAM. HOWEVER, APART FROM ANY QUESTION CONCERNING THE LIABILITY OF THE CARRIER OF THE INSURANCE OR THE VALIDITY OF ANY CLAIM, IT APPEARS THAT AMONG VALID DISPUTES WHICH MAY ARISE UNDER ARTICLE 11 IS A DISPUTE CONCERNING THE OBLIGATION OF THE COMPANY TO MAKE CONTRIBUTIONS ON BEHALF OF AN EMPLOYEE. IF SUCH A DISPUTE ARISES, SECTION 11.11 CLEARLY EXPRESSES THE AGREEMENT OF THE



PARTIES THAT THE GRIEVANCE PROCEDURE SET OUT IN ARTICLE 3 DOES NOT APPLY TO THIS TYPE OF DISPUTE. HOWEVER THAT MAY BE, GRIEVANCE PROCEDURES AND ARBITRATION PROCEDURES ARE TWO SEPARATE AND DISTINCT THINGS. WHILE THE TWO PROCEDURES MAY AT TIMES BE INTERLOCKING IN THEIR OPERATION, THEY ARE AND REMAIN DISTINCT PROCEDURES. INDEED, SECTION 37(2) OF THE LABOUR RELATIONS ACT WHICH SETS OUT THE ARBITRATION PROCEDURE WHICH IS DEEMED TO BE CONTAINED IN ANY COLLECTIVE AGREEMENT WHICH FAILS TO PROVIDE SUCH A PROCEDURE READS IN PART AS FOLLOWS-- "... EITHER OF THE PARTIES MAY, AFTER EXHAUSTING ANY GRIEVANCE PROCEDURE ESTABLISHED" NOTIFY THE OTHER THAT IT INTENDS TO ARBITRATE THE DIFFERENCE.

8. IN THE INSTANT CASE THE PARTIES IN SECTION 11.11 CLEARLY REFRAIN FROM ESTABLISHING A GRIEVANCE PROCEDURE FOR DISPUTES WHICH MIGHT ARISE UNDER THE INSURANCE PROGRAM.

9. AT THE HEARING IN THIS MATTER THE COMPANY AGREED THAT AN ARBITRATION BOARD OUGHT TO DETERMINE WHETHER THE DISPUTE BETWEEN THE PARTIES WITH RESPECT TO THE INSURANCE PROGRAM IS ARBITRABLE. THE COMPANY, HOWEVER, SPECIFICALLY RESERVED ITS RIGHT TO ARGUE THAT AN ARBITRATOR HAS NO JURISDICTION TO DECIDE THE MERITS OF ANY DISPUTE UNDER ARTICLE 11 OF THE COLLECTIVE AGREEMENT. THE COMPANY FURTHER AGREED THAT A TIME LIMIT OUGHT TO BE FIXED WITHIN WHICH AN ARBITRATOR MUST BE APPOINTED BY AGREEMENT OF THE PARTIES.

10. HAVING REGARD TO THE PROVISIONS OF SECTION 37 OF THE LABOUR RELATIONS ACT, THE AGREEMENT OF THE PARTIES SET OUT ABOVE AND THE RELEVANT PROVISIONS OF SECTION 3.06 OF THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES, THE BOARD IS OF OPINION THAT THE COLLECTIVE AGREEMENT BETWEEN THEM OUGHT TO BE AMENDED TO PROVIDE FOR A PROCEDURE FOR THE FINAL AND BINDING SETTLEMENT BY ARBITRATION, WITHOUT STOPPAGE OF WORK, OF ALL DIFFERENCES BETWEEN THE PARTIES ARISING FROM THE INTERPRETATION, APPLICATION, ADMINISTRATION OR ALLEGED VIOLATION OF ARTICLE 11 OF THE COLLECTIVE AGREEMENT, INCLUDING ANY QUESTION AS TO WHETHER A MATTER IS ARBITRABLE.

11. THE BOARD ACCORDINGLY DIRECTS THAT THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES BE AMENDED TO INCLUDE THE FOLLOWING SECTION:

SECTION 11:12:

WHERE A DIFFERENCE ARISES BETWEEN THE PARTIES RELATING TO THE INTERPRETATION, APPLICATION OR ADMINISTRATION OF THIS ARTICLE, INCLUDING ANY QUESTION AS TO WHETHER A MATTER IS ARBITRABLE, OR WHERE AN ALLEGATION IS MADE THAT THIS ARTICLE HAS BEEN VIOLATED, EITHER OF THE PARTIES MAY NOTIFY THE OTHER PARTY IN WRITING OF ITS DESIRE TO SUBMIT THE DIFFERENCE OR ALLEGATION TO ARBITRATION. THE PARTIES SHALL, WITHIN TEN DAYS OF SUCH NOTICE, APPOINT A SINGLE ARBITRATOR. IF THE RECIPIENT OF THE NOTICE FAILS

TO AGREE TO THE APPOINTMENT OF AN ARBITRATOR, OR IF THE TWO PARTIES FAIL TO AGREE UPON AN ARBITRATOR WITHIN THE TIME LIMITED, THE APPOINTMENT SHALL BE MADE BY THE MINISTER OF LABOUR FOR ONTARIO UPON THE REQUEST OF EITHER PARTY. THE ARBITRATOR SHALL HEAR AND DETERMINE THE DIFFERENCE OR ALLEGATION AND SHALL ISSUE A DECISION AND THE DECISION IS FINAL AND BINDING UPON THE PARTIES AND UPON ANY EMPLOYEE OR EMPLOYER AFFECTED BY IT.

DECISION OF BOARD MEMBER W. H. WIGHTMAN: APRIL 5, 1973.

I DISSENT.

IT IS MY UNDERSTANDING THAT, BY VIRTUE OF SECTION 37(3) OF THE LABOUR RELATIONS ACT, THE BOARD MAY MODIFY THE ARBITRATION PROVISIONS OF A COLLECTIVE AGREEMENT IF, IN THE OPINION OF THE BOARD, THE COLLECTIVE AGREEMENT IS INADEQUATE WHEN MEASURED AGAINST SECTION 37(1) OF THE ACT.

I DO NOT BELIEVE THE BOARD HAS AUTHORITY TO WANDER THROUGH THE COLLECTIVE AGREEMENT INSERTING THE DEEMED CLAUSE, OR AS IN THE INSTANT CASE A MODIFIED VERSION OF THE DEEMED CLAUSE, IN AN APPARENT EFFORT TO CHANGE OTHER FREELY NEGOTIATED PROVISIONS WHICH ONE OR ANOTHER OF THE PARTIES CLAIMS ARE NOT PERMISSIBLE UNDER THE ACT.

WE HEARD EVIDENCE THAT IN THE LAST TWO SETS OF NEGOTIATIONS THE APPLICANT ATTEMPTED TO NEGOTIATE THE REMOVAL OF SECTION 11:11 FROM THE COLLECTIVE AGREEMENT BUT ON BOTH OCCASIONS AN AGREEMENT WHICH INCLUDED SECTION 11:11 WAS REACHED. IT IS NOW FOR AN ARBITRATOR TO DECIDE THE EFFECT OF SECTION 11:11, NOT THE LABOUR RELATIONS BOARD.

IN MY RESPECTFUL VIEW THE MAJORITY DECISION IS UNNECESSARY BECAUSE THE ARBITRATION PROVISIONS OF THE COLLECTIVE AGREEMENT (SECTIONS 3:05 AND 3:06) ARE ADEQUATE. MOREOVER, THE EFFECT OF THE MAJORITY DECISION MIGHT BE TO SUGGEST THAT THE BOARD HAS TAKEN A DECISION AS TO THE MEANING AND EFFECT OF SECTION 11:11. WE DID INDEED HEAR ARGUMENT AS TO WHAT THE PARTIES INTENDED BY THIS SECTION OF THE COLLECTIVE AGREEMENT. THE FACT THAT I DO NOT SHARE THE INTERPRETATION WHICH MY COLLEAGUES EXPRESS IN THE MAJORITY DECISION IS NEITHER HERE NOR THERE SINCE IT IS NOT FOR US TO RULE ON THE QUESTION.

I WOULD HAVE DISMISSED THE APPLICATION.

3524-72-R: GRAPHIC ARTS INTERNATIONAL UNION, LOCAL 247 (APPLICANT) V. HUNTER PRINTING LONDON LTD. (RESPONDENT) V. INTERNATIONAL PRINTING PRESS-MEN & ASSISTANTS' UNION ON BEHALF OF LOCAL 510 (INTERVENER #1) V. LONDON TYPOGRAPHICAL UNION No. 133 (INTERVENER #2).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND W. H. WIGHTMAN.

APPEARANCES AT THE HEARING: B. A. DUNN AND WILLIAM RASTIN FOR THE APPLICANT; IAN BAXTER FOR THE RESPONDENT; J. STEELE FOR INTERVENER #1; IAN SCOTT, Q.C., AND A. HISED FOR INTERVENER #2.

DECISION OF THE BOARD:

APRIL 25, 1973.

1. THIS IS AN APPLICATION FOR CERTIFICATION WHEREIN THE APPLICANT SEEKS TO DISPLACE INTERVENER #2 IN THE CRAFT BARGAINING UNIT PRESENTLY REPRESENTED BY INTERVENER #2. INTERVENER #2 OBJECTED TO THE APPLICATION ON THE GROUNDS THAT THE APPLICANT HAD NOT ESTABLISHED A TRADE UNION PRACTICE OF REPRESENTING THE SKILLS IN A CRAFT BARGAINING UNIT COMPRISED OF COMPOSING ROOM EMPLOYEES. IN THE ALTERNATIVE, INTERVENER #2 FURTHER ARGUED THAT IF THE APPLICANT IS ENTITLED TO DISPLACE INTERVENER #2, THE APPROPRIATE BARGAINING UNIT THAT THE APPLICANT WOULD BE REQUIRED TO ORGANIZE WOULD CONSIST OF A TAG-END UNIT COMPRISING NOT ONLY THE EMPLOYEES CURRENTLY REPRESENTED BY INTERVENER #2 BUT ANY OTHER EMPLOYEE NOT PRESENTLY INCLUDED IN A BARGAINING UNIT REPRESENTED BY OTHER CRAFT UNIONS.

2. THE BOARD'S JURISDICTION TO CERTIFY A CRAFT BARGAINING UNIT IS OUTLINED IN SECTION 6(2) OF THE LABOUR RELATIONS ACT. ACCORDINGLY, ONLY A TRADE UNION WHICH HAS AN ESTABLISHED TRADE UNION PRACTICE PERTAINING TO THE SKILLS OR CRAFT DEFINED IN A CRAFT BARGAINING UNIT MAY BE CERTIFIED TO REPRESENT SUCH CRAFT BARGAINING UNIT. HOWEVER THAT MAY BE, THERE IS NOTHING IN THE LABOUR RELATIONS ACT WHICH PRECLUDES A TRADE UNION WHICH DOES NOT ORGANIZE ALONG CRAFT LINES FROM DISPLACING A CRAFT UNION AS BARGAINING AGENT. IN ORDER TO GIVE EFFECT TO THE PROVISIONS OF SECTION 3 OF THE ACT AND IN THE EXERCISE OF OUR JURISDICTION UNDER SECTION 5, ANY TRADE UNION MAY APPLY TO DISPLACE AN INCUMBENT TRADE UNION AS BARGAINING AGENT FOR THE EMPLOYEES REPRESENTED BY THE INCUMBENT TRADE UNION SO LONG AS THE APPLICANT TRADE UNION IS ABLE TO TAKE INTO MEMBERSHIP, PURSUANT TO THE PROVISIONS OF ITS CONSTITUTION OR SECTION 92(4) OF THE ACT, ALL EMPLOYEES WHO ARE INCLUDED IN THE BARGAINING UNIT REPRESENTED BY THE INCUMBENT UNION. ACCORDINGLY, EVEN THOUGH AN INDUSTRIAL TRADE UNION CANNOT ORGANIZE ALONG CRAFT LINES IT IS PERMITTED TO REPRESENT CRAFT EMPLOYEES IN A BARGAINING UNIT DESCRIBED IN TERMS OF "ALL EMPLOYEES". AGAIN, AN INDUSTRIAL TRADE UNION MAY REPRESENT EMPLOYEES IN A BARGAINING UNIT DESCRIBED IN TERMS OF "ALL EMPLOYEES" EVEN THOUGH EACH EMPLOYEE IN SUCH A BARGAINING UNIT EXERCISES SKILLS COMMON TO A SINGLE CRAFT. HOWEVER, IF AN INDUSTRIAL TRADE UNION DISPLACES A CRAFT UNION, THE INDUSTRIAL TRADE UNION IS NOT ENTITLED TO BE CERTIFIED FOR THE CRAFT BARGAINING UNIT BUT MUST BE CERTIFIED IN A BARGAINING UNIT DESCRIBED IN TERMS OF "ALL EMPLOYEES".

3. IN ADDITION, IF THE APPLICANT IN THIS CASE IS SUCCESSFUL IN DISPLACING INTERVENER #2 IT NEED NOT ORGANIZE OTHER EMPLOYEES WHO ARE NOT REPRESENTED BY INTERVENER #2. THE APPLICANT NEED ONLY ESTABLISH THAT IT HAS AS MEMBERS AT LEAST THIRTY-FIVE PER CENT OF THE EMPLOYEES WHO ARE INCLUDED IN THE BARGAINING UNIT REPRESENTED BY THE INCUMBENT UNION IN ORDER TO SATISFY THE REQUIREMENTS OF SECTION 7(2) OF THE ACT. ACCORDINGLY, IF THE APPLICANT IN THE INSTANT CASE IS SUCCESSFUL IN THIS APPLICATION, THE APPROPRIATE BARGAINING UNIT FOR WHICH THE APPLICANT WOULD BE CERTIFIED WOULD BE DESCRIBED IN TERMS OF ALL EMPLOYEES OF THE RESPONDENT, SAVE AND



EXCEPT MANAGERIAL EMPLOYEES, OFFICE STAFF, EMPLOYEES COVERED BY SUBSISTING COLLECTIVE AGREEMENTS BETWEEN THE RESPONDENT AND OTHER TRADE UNIONS AND ALL OTHER EMPLOYEES WHO ARE NOT CURRENTLY REPRESENTED BY INTERVENER #2 WHOM THE APPLICANT SEEKS TO DISPLACE.

. . .

5. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN THIRTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE VOTING CONSTITUENCY HEREINAFTER DESCRIBED, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON APRIL 6, 1973, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

6. THE BOARD DIRECTS THAT A REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE FOLLOWING VOTING CONSTITUENCY:

ALL COMPOSING ROOM WORK AND INCLUDING CLASSIFICATIONS SUCH AS: HAND COMPOSITORS, TYPESETTING MACHINE OPERATORS, MAKEUP MEN, BANK MEN, PROOFPRESS OPERATORS, PROOFREADERS, MACHINISTS FOR TYPESETTING MACHINES, OPERATORS AND MACHINISTS ON ALL DEVICES WHICH CAST OR COMPOSE TYPE OR SLUGS, OR FILM, OPERATORS OF TAPE PERFORATING MACHINES AND RE-CUTTER UNITS FOR USE IN COMPOSING OR PRODUCING TYPE, OPERATORS OF ALL PHOTO-TYPESETTING MACHINES (SUCH AS FOTOFESTER, PHOTON, LINOFORM, MONOPHOTO, COXHEAD LINER, FILMOTYPE, TYPRO, AND HADEGO) AND EMPLOYEES ENGAGED IN PROOFING, WAXING AND PASTE-MAKEUP WITH REPRODUCTION PROOFS, PROCESSING THE PRODUCT OF PHOTOTYPESETTING MACHINES, INCLUDING DEVELOPMENT AND WAXING; PASTE-MAKEUP OF ALL TYPE, HAND-LETTERED, ILLUSTRATIVE, BORDER AND DECORATIVE MATERIAL CONSTITUTING A PART OF THE COPY; RULING; PHOTO-PROOFING; CORRECTION, ALTERATION, AND IMPOSITION OF THE PASTE-MAKEUP SERVING AS THE COMPLETED COPY FOR THE CAMERA USED IN THE PLATE-MAKING PROCESS, CAMERA WORK, POST-CAMERA WORK, OFFSET PLATE-MAKING (INCLUDING ALL PLATES SUCH AS DYCRIL PLATES) AND ANY WORK SERVING AS A SUBSTITUTE FOR ANY OF THE FOREGOING.

7. ALL EMPLOYEES OF THE RESPONDENT IN THE VOTING CONSTITUENCY ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

8. VOTERS WILL BE GIVEN A CHOICE BETWEEN THE APPLICANT AND INTERVENER #2.

9. THE MATTER IS REFERRED TO THE REGISTRAR.

3311-72-R: TORONTO NEWSPAPER GUILD, LOCAL 87 (APPLICANT) V. CCH CANADIAN LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND P. J. O'KEEFE.

DECISION OF THE BOARD:

APRIL 30, 1973.

. . .

2. HAVING REGARD TO THE AGREEMENT OF THE PARTIES RECORDED WITH THE EXAMINER APPOINTED IN THIS MATTER, THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT IN ITS EDITORIAL DEPARTMENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT THE MANAGING EDITOR, PERSONS ABOVE THE RANK OF MANAGING EDITOR, SECRETARY TO THE MANAGING EDITOR, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

3. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT L. A. DOYLE IS A MEMBER OF THE LEGAL PROFESSION ENTITLED TO PRACTISE IN ONTARIO AND IS EMPLOYED IN A PROFESSIONAL CAPACITY AND THEREFORE IS NOT INCLUDED IN THE BARGAINING UNIT.

. . .

5. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

. . .

3464-72-R: LARRY MacKENZIE (APPLICANT) V. HYDRAULIC HIGH PRESSURE WATER CLEANING AND CHEMICAL CLEANING DIVISION OF THE BROTHERHOOD OF PAINTERS AND ALLIED TRADES OF AMERICA, LOCAL 1590 (RESPONDENT) V. C. H. HEIST (CANADA) LIMITED (INTERVENER).

BEFORE: D.E. FRANKS, VICE-CHAIRMAN, AND BOARD MEMBERS H.J.F. ADE AND E. BOYER.

APPEARANCES AT THE HEARING: J.M. DILLON FOR THE APPLICANT; RAYMOND KOSKIE AND C. SHEFFER FOR THE RESPONDENT; R.D. PERKINS AND LOUIS BORINS FOR THE INTERVENER.

DECISION OF THE BOARD:

APRIL 30, 1973.

1. THIS IS AN APPLICATION FOR TERMINATION OF BARGAINING RIGHTS BROUGHT BY THE APPLICANT UNDER SECTION 49 OF THE ACT WITH RESPECT TO

CERTAIN EMPLOYEES OF THE INTERVENER. THE RESPONDENT ARGUES THAT THE EMPLOYEES WHO BROUGHT THE APPLICATION HAVE NOT DEMONSTRATED THAT THEY ARE EMPLOYEES IN THE BARGAINING UNIT. THE SCOPE OF THE BARGAINING UNIT IN THE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER AT THE RELEVANT TIME IS FOUND IN ARTICLE 1 AND READS AS FOLLOWS:

#### ARTICLE 1. SCOPE

(A) THIS AGREEMENT SHALL COVER THE COUNTY OF LAMBTON, ONTARIO AND BECOME EFFECTIVE...

(C) THE DIVISION OF THE TRADE UNION HERETOFORE MENTIONED IS RECOGNIZED AS THE SOLE AND EXCLUSIVE BARGAINING AGENT FOR ALL EMPLOYEES WORKING OUT OF THE EMPLOYER'S SARNIA OFFICE IN THE HYDRAULIC HIGH PRESSURE WATER CLEANING PROCESSES SAVE AND EXCEPT EXECUTIVE OFFICERS, OFFICE STAFF, SALARIED EMPLOYEES AND THOSE ABOVE THE RANK OF FOREMAN WITH THE RIGHT TO HIRE AND FIRE.

IT SHOULD BE POINTED OUT THAT THE DOCUMENT WHICH SIGNIFIES IN WRITING A DESIRE OF THE EMPLOYEES TO TERMINATE THE BARGAINING RIGHTS OF THE RESPONDENT WHICH WAS SUBMITTED WITH THE APPLICATION BEARS THE FOLLOWING HEADING:

"WE, THE UNDERSIGNED, EMPLOYEES OF C.H. HEIST (CANADA) LIMITED, HYDRAULIC HIGH PRESSURE WATER CLEANING AND CHEMICAL CLEANING DIVISION AT SARNIA, ONTARIO, NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT."

FURTHER, THE INTERVENER FILED A LIST OF EMPLOYEES IN THE BARGAINING UNIT WHICH IS THE SUBJECT MATTER OF THIS APPLICATION AND ALL OF THE NAMES APPEARING ON THE PETITION BY THE EMPLOYEES APPEAR ON THE LIST OF EMPLOYEES IN THE BARGAINING UNIT. THERE IS THUS EVIDENCE BEFORE THE BOARD THAT THE EMPLOYEES WHO SIGNED THE PETITION ARE EMPLOYEES IN THE BARGAINING UNIT. THE RESPONDENT DID NOT CALL ANY EVIDENCE NOR DID THE RESPONDENT CROSS-EXAMINE THE EMPLOYEES WHO GAVE EVIDENCE AS TO WHETHER OR NOT THEY WERE IN THE BARGAINING UNIT. REGARDLESS OF THE RESPONDENT'S REASONS FOR NOT ADDUCING EVIDENCE WITH RESPECT TO WHAT HE CLAIMS TO BE THE CASE, THERE IS SUFFICIENT EVIDENCE BEFORE THE BOARD THAT THE EMPLOYEES IN QUESTION ARE EMPLOYEES IN THE BARGAINING UNIT.

2. THE INTERVENER, ON THE OTHER HAND, ARGUES THAT THE APPLICATION IS UNTIMELY BECAUSE AT THE TIME WHEN THIS APPLICATION WAS MADE ON MARCH 16, 1973, THE AGREEMENT IN FORCE BETWEEN THE EMPLOYER AND THE RESPONDENT



WAS NOT DUE TO EXPIRE UNTIL MARCH 31, 1974. IT APPEARS FROM THE EVIDENCE PRESENTED TO THE BOARD IN THIS CASE THAT NOTICE TO NEGOTIATE CHANGES OR AMENDMENTS TO THE COLLECTIVE AGREEMENT WAS SENT ON FEBRUARY 6, 1973. ON THE OTHER HAND THE COLLECTIVE AGREEMENT IN ARTICLE 1 READS AS FOLLOWS:

#### ARTICLE 1. SCOPE

(A) THIS AGREEMENT SHALL COVER THE COUNTY OF LAMBTON, ONTARIO AND BECOME EFFECTIVE OCTOBER 5TH, 1970 AND SHALL REMAIN IN FORCE AND EFFECT UNTIL AND INCLUSIVE OF MARCH 31, 1973. THEREAFTER IT SHALL AUTOMATICALLY BE RENEWED FROM YEAR TO YEAR UNLESS IN ANY ONE YEAR NOT MORE THAN NINETY (90) DAYS AND NOT LESS THAN SIXTY (60) DAYS PRIOR TO APRIL 1, 1973 EITHER PARTY HERETO SHALL FURNISH THE OTHER WITH A NOTICE OF PROPOSED CHANGES, REVISIONS OR ADDITIONS TO ANY PROVISIONS THEREOF.

IN SUCH EVENT, NEGOTIATIONS ON ANY SUCH PROPOSED CHANGES, REVISIONS OR ADDITIONS SHALL TAKE PLACE BETWEEN THE PARTIES HERETO WITHIN TWENTY (20) DAYS OF SUCH NOTICE.

IT IS THUS THE RESPONDENT'S ARGUMENT THAT THE ARGUMENT RENEWED ITSELF BY THE OPERATION OF ARTICLE 1(A) AND THEREFORE THE RELEVANT TIME FOR AN APPLICATION UNDER SECTION 49 OF THE ACT WOULD BE THE LAST TWO MONTHS PRIOR TO MARCH 31, 1974.

3. THE BOARD HAS CONSIDERED A PROVISION IN A COLLECTIVE AGREEMENT OF THE TYPE REFERRED TO IN PARAGRAPH 2 ABOVE IN THE WALFOODS LTD. CASE 58 CLLC 1721. IN THAT CASE THE BOARD FOUND THAT THE COLLECTIVE AGREEMENT CEASED TO OPERATE PRIOR TO THE RENEWAL PROVISION COMING INTO EFFECT. IN OTHER WORDS, IN THE PRESENT CASE THE COLLECTIVE AGREEMENT COMES TO AN END ON MARCH 31, 1973, BEFORE THE RENEWAL PROVISION TAKES EFFECT. THAT BEING THE CASE THIS APPLICATION IS TIMELY WITHIN THE MEANING OF CLAUSE A OF SUBSECTION 2 OF SECTION 49.

4. ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THE BOARD IS SATISFIED THAT NOT LESS THAN FIFTY PER CENT OF THE EMPLOYEES OF C.H. HEIST (CANADA) LIMITED IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, HAD VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT UNION ON MARCH 28, 1973, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING THE NUMBER OF PERSONS WHO HAVE VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT UNION UNDER SECTION 49(3) OF THE SAID ACT.

5. THE BOARD DIRECTS THAT A REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES OF C.H. HEIST (CANADA) LIMITED. THOSE ELIGIBLE TO VOTE ARE ALL EMPLOYEES OF C.H. HEIST (CANADA) LIMITED WORKING OUT OF THE EMPLOYER'S SARNIA OFFICE IN THE HYDRAULIC HIGH PRESSURE WATER CLEANING PROCESSES SAVE AND EXCEPT EXECUTIVE OFFICERS, OFFICE STAFF, SALARIED EMPLOYEES AND THOSE ABOVE THE RANK OF FOREMAN WITH THE RIGHT TO HIRE AND FIRE ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN.

6. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BE REPRESENTED BY THE RESPONDENT IN THEIR EMPLOYMENT RELATIONS WITH C.H. HEIST (CANADA) LIMITED.

7. THE MATTER IS REFERRED TO THE REGISTRAR.









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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING APRIL 1973

BARGAINING AGENTS CERTIFIED DURING APRIL

NO VOTE CONDUCTED

18802-70-R: CSAO NATIONAL (INC.) (APPLICANT) V. HOTEL DIEU HOSPITAL (CORNWALL) (RESPONDENT).

UNIT: "ALL MEDICAL LABORATORY TECHNOLOGISTS, MEDICAL LABORATORY TECHNICIANS AND THEIR ASSISTANTS EMPLOYED BY THE RESPONDENT IN ITS MEDICAL LABORATORIES AT CORNWALL, SAVE AND EXCEPT ASSISTANT CHIEF TECHNOLOGIST, PERSONS ABOVE THE RANK OF ASSISTANT CHIEF TECHNOLOGIST, STUDENTS, OFFICE AND CLERICAL STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIODS." (11 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR PURPOSES OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT EKG AND EEG TECHNICIANS ARE NOT INCLUDED IN THE BARGAINING UNIT.).

18804-70-R: CSAO NATIONAL (INC.) (APPLICANT) V. CORNWALL GENERAL HOSPITAL (RESPONDENT).

UNIT: "ALL MEDICAL LABORATORY TECHNOLOGISTS, MEDICAL LABORATORY TECHNICIANS AND THEIR ASSISTANTS EMPLOYED AT THE RESPONDENT'S MEDICAL LABORATORIES AT CORNWALL, SAVE AND EXCEPT ASSISTANT CHIEF TECHNOLOGIST, PERSONS ABOVE THE RANK OF ASSISTANT CHIEF TECHNOLOGIST, STUDENTS, OFFICE AND CLERICAL STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 783." (11 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR PURPOSES OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES MADE AT THE HEARING OF THE APPLICATION THAT EKG TECHNICIANS ARE NOT INCLUDED IN THE BARGAINING UNIT.).

(INADVERTENTLY DELETED FROM THE MARCH 1973 MONTHLY REPORT).

23-70-R: CSAO NATIONAL (INC.) (APPLICANT) V. NORFOLK GENERAL HOSPITAL (RESPONDENT).

UNIT: "ALL MEDICAL LABORATORY TECHNOLOGISTS AND MEDICAL LABORATORY TECHNICIANS EMPLOYED BY THE RESPONDENT IN ITS MEDICAL LABORATORY AT SIMCOE, SAVE AND EXCEPT ASSISTANT CHIEF LAB TECHNICIANS AND PERSONS ABOVE THE RANK OF ASSISTANT CHIEF LAB TECHNICIAN, STUDENTS, OFFICE AND CLERICAL STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIODS, AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION LOCAL 220." (6 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR THE

PURPOSE OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT WARD CLERKS AND MORGUE ATTENDANT ARE NOT INCLUDED IN THE BARGAINING UNIT.).

1339-71-R: METROPOLITAN PLUMBING AND HEATING CONTRACTORS ASSOCIATION, A DIVISION OF THE MECHANICAL CONTRACTORS ASSOCIATION TORONTO (APPLICANT) V. THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 46 (RESIDENTIAL DIVISION) (RESPONDENT) V. TORONTO HOME BUILDERS' ASSOCIATION (INTERVENER).

UNIT: "ALL EMPLOYERS OF PLUMBERS AND PLUMBERS' APPRENTICES, STEAMFITTERS AND STEAMFITTERS' APPRENTICES AND WELDERS FOR WHOM THE RESPONDENT HAS BARGAINING RIGHTS IN THE REGIONAL MUNICIPALITY OF YORK, THAT PORTION OF ONTARIO COUNTY LYING WEST OF PICKERING-WHITBY TOWNSHIPS LINE, PEEL COUNTY, THAT PORTION OF HALTON COUNTY LYING SOUTH OF HIGHWAY 401 AND EAST OF THE SEVENTH LINE AND DUFFERIN COUNTY IN THE RESIDENTIAL SECTOR OF THE CONSTRUCTION INDUSTRY." (NO EMPLOYEES IN THE UNIT).

[1973] 2 OLRB M. R. - PAGE 199.

2327-72-R: TEAMSTERS LOCAL UNION 879 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. CAYUGA MATERIALS & CONSTRUCTION CO. LIMITED (RESPONDENT) V. CHRISTIAN LABOUR ASSOCIATION OF CANADA (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SIMCOE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, DISPATCHER, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (7 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

2750-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. MAXIM ELECTRICAL CONSTRUCTION COMPANY LTD. (RESPONDENT) V. INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION 353 (INTERVENER).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND CONSTRUCTION LABOURERS ENGAGED IN BUILDING PROJECTS." (5 EMPLOYEES IN THE UNIT).

2864-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. HASHMAN CONSTRUCTION LIMITED (RESPONDENT) V. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (INTERVENER).

UNIT: "ALL THE CIRCUMSTANCES OF THIS APPLICATION. ACCORDINGLY, THE BOARD FURTHER FINDS THAT ALL CARPENTERS AND CARPENTERS' APPRENTICES IN



THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (19 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES).

[1973] 2 OLRB M.R. - PAGE 205.

2895-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. CORPORATION OF THE COUNTY OF OXFORD (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF OXFORD ROAD DEPARTMENT, SAVE AND EXCEPT SUPERVISOR, FOREMEN, SUPERINTENDENT, AND PERSONS ABOVE THE RANK OF SUPERVISOR, FOREMAN AND SUPERINTENDENT, OFFICE AND CLERICAL STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (30 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

3219-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE BOARD OF PARKS MANAGEMENT AND THE SARNIA ARENA & COMMUNITY CENTRE BOARD (RESPONDENTS) V. ONTARIO PROFESSIONAL FIRE FIGHTERS ASSOCIATION (INTERVENER #1) V. THE SARNIA PROFESSIONAL FIRE FIGHTERS (INTERVENER #2).

UNIT: "ALL EMPLOYEES OF THE RESPONDENTS IN SARNIA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE, CLERICAL AND TECHNICAL STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (59 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES). (FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT TEMPORARY EMPLOYEES AND SEASONAL EMPLOYEES ARE INCLUDED IN THE BARGAINING UNIT.).

3224-72-R: LOCAL UNION 278 INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA A.F.L., -C.I.O., C.L.C. (APPLICANT) V. CANADA DRY BOTTLING COMPANY (WINDSOR) LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT #1: "ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT FOREMEN, SUPERVISORS, PERSONS ABOVE THE RANK OF FOREMAN AND SUPERVISOR, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK." (17 EMPLOYEES IN THE UNIT).

(BARGAINING UNIT #2 - SEE CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE).

3232-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE LENNOX AND ADDINGTON COUNTY BOARD OF EDUCATION (RESPONDENT).

UNIT #1: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF LENNOX AND ADDINGTON EMPLOYED IN MAINTENANCE SERVICES AND PLANT OPERATIONS, SAVE AND

EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND OFFICE STAFF." (56 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE SUBMISSIONS OF THE PARTIES).

UNIT #2: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF LENNOX AND ADDINGTON REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK IN ITS MAINTENANCE SERVICES AND PLANT OPERATIONS AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (29 EMPLOYEES IN THE UNIT).

3303-72-R: BRICKLAYERS, STONEMASONS & TILESETTERS UNION LOCAL NO. 2 (ONTARIO) (APPLICANT) V. CLOVERLAWN INVESTMENTS LIMITED (RESPONDENT).

UNIT: "ALL BRICKLAYERS AND BRICKLAYERS' APPRENTICES, STONEMASONS AND STONEMASONS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (1 EMPLOYEE IN THE UNIT).

3338-72-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 837 (APPLICANT) V. WINCHESTER CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF NIAGARA AND THE COUNTY OF HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

3346-72-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1669 (APPLICANT) V. GEORGE ARMSTRONG CO. LIMITED (RESPONDENT) V. TEAMSTERS INTERNATIONAL UNION LOCAL 990, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (INTERVENER).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF RAINY RIVER, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

3369-72-R: INTERNATIONAL BROTHERHOOD OF PAINTERS & ALLIED TRADES LOCAL UNION 1891 (APPLICANT) V. LORMAC PAINTING & DECORATING LTD. (RESPONDENT).

UNIT: "ALL PAINTERS AND PAINTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF ONTARIO (EXCEPT THE TOWNSHIPS OF PICKERING, RAMA, MARA AND THORAH) AND THE COUNTY OF DURHAM (EXCEPT THE TOWNSHIP OF HOPE), SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (15 EMPLOYEES IN THE UNIT).

3393-72-R: TEAMSTERS LOCAL 879 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. VALLANCE BROWN & CO. LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT OR WORKING OUT OF METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (24 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

3398-72-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. ACME SEELEY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT RENFREW, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (89 EMPLOYEES IN THE UNIT).

3447-72-R: PRINTING SPECIALTIES AND PAPER PRODUCTS UNION LOCAL 540 (APPLICANT) V. DEMOCON LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE PRINT-O-TAPE DIVISION OF THE RESPONDENT AT BURLINGTON, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (28 EMPLOYEES IN THE UNIT).

3456-72-R: DIAMOND "Z" ASSOCIATION (APPLICANT) V. ZEHR'S MARKETS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE PRODUCE AND FROZEN FOOD WAREHOUSE AT 100 SASAGA ROAD IN KITCHENER, SAVE AND EXCEPT SUPERVISORS AND FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR AND FOREMAN AND OFFICE STAFF." (29 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

3457-72-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL 647 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. WESTON BAKERIES LIMITED (RESPONDENT).

UNIT: "ALL OFFICE EMPLOYEES OF THE RESPONDENT AT ESSEX, SAVE AND EXCEPT OFFICE SUPERVISOR AND PERSONS ABOVE THE RANK OF OFFICE SUPERVISOR, ONE SECRETARY TO THE GENERAL MANAGER AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (9 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR THE PURPOSES OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE ACCOUNTANT IS NOT INCLUDED IN THE BARGAINING UNIT.).



3458-72-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (APPLICANT) V. MARR'S MARINE LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT THUNDER BAY, SAVE AND EXCEPT MANAGERS, PERSONS ABOVE THE RANK OF MANAGER, OFFICE AND SALES STAFF," (3 EMPLOYEES IN THE UNIT).

3459-72-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL 647 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. GEORGE LANTHIER & FILS LIMITEE (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT DALKEITH, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, DRIVER SALES-MEN AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK," (7 EMPLOYEES IN THE UNIT).

3473-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 607 (APPLICANT) V. BOLE'S FEEDS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE DISTRICT OF THUNDER BAY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE, SALES AND CLERICAL STAFF." (5 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

3474-72-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. VALLEY VIEW DAIRIES, DIVISION OF FEDERAL DIVERSIPLEX LIMITED (RESPONDENT).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT OFFICE MANAGER, PERSONS ABOVE THE RANK OF OFFICE MANAGER, SALES STAFF, PRIVATE SECRETARY TO THE DIVISION MANAGER AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK." (16 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

3478-72-R: BAKERY & CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA, LOCAL 264 (APPLICANT) V. LAURA SECORD CANDY SHOPS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT 2 ROLARK DRIVE, SCARBOROUGH, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, QUALITY CONTROL EMPLOYEES, SALES CLERKS, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (53 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

3480-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1669 (APPLICANT) V. LAURI HARJU, DOING BUSINESS AS SKANDIA BUILDERS (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF THUNDER BAY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

3482-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837 (APPLICANT) v. HOPE-LOCH CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF NIAGARA AND THE COUNTY OF HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

3483-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 527 (APPLICANT) v. BOTHWELL-ACCURATE CO. LTD. (RESPONDENT) v. THE BUILT-UP ROOFERS' DAMP & WATERPROOFERS' SECTION OF THE SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION LOCAL #30 (INTERVENER).

UNIT: "ALL ROOFING PERSONNEL IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

3484-72-R: OPERATIVE PLASTERER'S AND CEMENT MASON'S INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA LOCAL UNION NO. 124 OTTAWA (APPLICANT) v. PREBEC INC. (RESPONDENT).

UNIT: "ALL CEMENT MASONS AND CEMENT MASONS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

3485-72-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION 1730 (APPLICANT) v. DRYDEN MUNICIPAL AIRPORT COMMISSION (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT DRYDEN, SAVE AND EXCEPT MANAGER, PERSONS ABOVE THE RANK OF MANAGER, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (11 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

3487-72-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) v. TELEDYNE LAARS LIMITED (RESPONDENT).

UNIT: "ALL OUTSIDE SERVICE WORKERS EMPLOYED BY THE RESPONDENT AT OAKVILLE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS COVERED BY A CERTIFICATE ISSUED BY THIS BOARD ON FEBRUARY 20, 1973." (2 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

3495-72-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. NORTHERN ELECTRIC COMPANY LIMITED (KINGSTON WORKS) (RESPONDENT).

UNIT: "ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT IN KINGSTON TOWNSHIP, SAVE AND EXCEPT SECTION MANAGERS, PERSONS ABOVE THE RANK OF SECTION MANAGER, ENGINEERS, MEMBERS OF THE PERSONNEL DEPARTMENT, NURSES, SPECIALISTS PERFORMING FUNCTIONS IN PURCHASING, MERCHANDISING, BUSINESS SYSTEMS, ACCOUNTING AND DATA PROCESSING, SECRETARY(IES) TO THE MANUFACTURING MANAGER, SECRETARY(IES) TO THE MANAGER OF PRODUCTION AND MATERIAL CONTROL, MANAGER PLANT ENGINEERING, MANAGER MANUFACTURING ENGINEERING AND MANAGER PURCHASING." (28 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

3496-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL UNION No. 597 (APPLICANT) V. DALTON ENGINEERING & CONST. CO. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF ONTARIO (EXCEPT THE TOWNSHIPS OF PICKERING, RAMA, MARA AND THORAH) AND THE COUNTY OF DURHAM (EXCEPT THE TOWNSHIP OF HOPE), SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

3497-72-R: OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA LOCAL UNION 124 OTTAWA, ONTARIO (APPLICANT) V. MODERN CEILING (RESPONDENT).

UNIT: "ALL PLASTERERS AND PLASTERERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT). (FOR THE PURPOSE OF CLARITY, THE BOARD DECLARED THAT DRYWALL TAPERS ARE INCLUDED IN THE BARGAINING UNIT.).

3499-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (APPLICANT) V. CLOVERLAWN INVESTMENTS LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT ENGAGED IN BUILDING PROJECTS IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

3502-72-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 493 (APPLICANT) V. THERMO MECHANICAL CONTRACTORS (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WITHIN A FIFTY MILE RADIUS OF THE TIMMINS FEDERAL BUILDING, SAVE AND EXCEPT NON-



WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."  
(6 EMPLOYEES IN THE UNIT).

3503-72-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 493  
(APPLICANT) V. GAUDREAU PLASTERING LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY MILE RADIUS OF THE NORTH BAY POST OFFICE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

3514-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL UNION NO. 597 (APPLICANT) V. W. G. GALLAGHER CONSTRUCTION LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF ONTARIO (EXCEPT THE TOWNSHIPS OF PICKERING, RAMA, MARA AND THORAH) AND THE COUNTY OF DURHAM (EXCEPT THE TOWNSHIP OF HOPE), SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

3529-72-R: NURSES' ASSOCIATION ESPANOLA GENERAL HOSPITAL (APPLICANT) V. ESPANOLA GENERAL HOSPITAL (RESPONDENT).

UNIT #1: "ALL REGISTERED AND GRADUATE NURSES AT THE ESPANOLA GENERAL HOSPITAL AT ESPANOLA, EMPLOYED IN A NURSING CAPACITY, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK." (8 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

UNIT #2: "ALL REGISTERED AND GRADUATE NURSES AT THE ESPANOLA GENERAL HOSPITAL AT ESPANOLA, REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK IN A NURSING CAPACITY, SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR," (2 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

3535-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837 (APPLICANT) V. CECCHINI BROS. MASONRY (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF NIAGARA AND THE COUNTY OF HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (8 EMPLOYEES IN THE UNIT).

3536-72-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. W. A. McDougall Construction Management Ltd. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING

FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (1 EMPLOYEE IN THE UNIT).

3537-72-R: UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA LOCAL 787 (APPLICANT) V. BEAVER ENGINEERING LIMITED WHOLESALE DIVISION (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PIPE TUBE AND FABRICATION SHOP AT 45 CRANFIELD ROAD IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (10 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

3538-72-R: SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 532 AFFILIATED WITH A.F. OF L., C.I.O., C.L.C. (APPLICANT) V. HAMILTON BLAKE NURSING HOMES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS HAMILTON BLAKE NURSING HOME AT HAMILTON, SAVE AND EXCEPT PROFESSIONAL NURSING STAFF, PHYSIOTHERAPISTS, SUPERVISORS AND FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR AND FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (41 EMPLOYEES IN THE UNIT).

3539-72-R: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS, LOCAL 419 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. NATIONAL GROCERS COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, CASH AND CARRY OPERATIONS, EMPLOYEES IN THE RETAIL STORES, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE RETAIL, WHOLESALE AND DEPARTMENT STORE UNION AND ITS LOCALS." (51 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

3546-72-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837 (APPLICANT) V. ENVIRONMENTAL TECHNICAL SERVICES (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WENTWORTH AND THE TOWNSHIP OF NASSAGAWEYA AND THE TOWN OF BURLINGTON IN THE COUNTY OF HALTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

3558-73-R: LABOURERS, INTERNATIONAL UNION OF NORTH AMERICA LOCAL 527 (APPLICANT) V. BOULEVARD DEMOLISHERS WRECKING CONTRACTORS (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN

THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

3560-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837 (APPLICANT) V. CLARKSON CONSTRUCTION COMPANY LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF NIAGARA AND THE COUNTY OF HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (26 EMPLOYEES IN THE UNIT).

3566-73-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. J. B. CARROLL ELECTRIC LIMITED (RESPONDENT).

UNIT: "ALL ELECTRICIANS AND ELECTRICIANS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF RENFREW, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

3571-73-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 2486 (APPLICANT) V. DINEEN CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY MILE RADIUS OF THE NORTH BAY POST OFFICE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (8 EMPLOYEES IN THE UNIT).

3581-73-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. STEED AND EVANS, A DIVISION OF STEED AND EVANS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF WENTWORTH AND THE TOWNSHIP OF NASSAGAWEYA AND THE TOWN OF BURLINGTON IN THE COUNTY OF HALTON ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

3588-73-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. CAPE INSTALLATIONS LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF ONTARIO (EXCEPT THE TOWNSHIPS OF PICKERING, RAMA, MARA AND THORAH) AND THE COUNTY OF DURHAM (EXCEPT THE TOWNSHIP OF HOPE) ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).



3608-73-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 837  
(APPLICANT) V. SUPERIOR ENGINEERING LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF NIAGARA AND THE COUNTY OF HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (9 EMPLOYEES IN THE UNIT).

3613-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 837  
(APPLICANT) V. WIL-KEN STEEL SERVICES LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF NIAGARA AND THE COUNTY OF HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

#### APPLICATIONS CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

3080-72-R: MARBLE MASONS TILE LAYERS AND TERRAZZO WORKERS UNION NO. 31 (APPLICANT) V. MAREL CONTRACTORS (RESPONDENT) V. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (INTERVENER #1) V. THE OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 117 (INTERVENER #2).

UNIT: "ALL PLASTERERS AND PLASTERERS' APPRENTICES OF THE RESPONDENT EMPLOYED AT OR WORKING OUT OF METROPOLITAN TORONTO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (17 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		21
NUMBER OF PERSONS WHO CAST BALLOTS	19	
NUMBER OF SPOILED BALLOTS	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	16	
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER #2	2	

3126-72-R: MARBLE MASONS TILE LAYERS AND TERRAZZO WORKERS UNION NO. 31 (APPLICANT) V. ROSELAWN PLASTERERS CO. LTD. (RESPONDENT) V. THE OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 117 (INTERVENER #1) V. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (INTERVENER #2).

UNIT: "ALL PLASTERERS AND PLASTERERS' APPRENTICES OF THE RESPONDENT EMPLOYED AT OR WORKING OUT OF METROPOLITAN TORONTO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (56 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	55
NUMBER OF PERSONS WHO CAST BALLOTS	51
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	47
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER #1	4

3154-72-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. SEHI ENGINEERING LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT KITCHENER, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, DESIGNERS, ENGINEERS, AND OFFICE AND SALES STAFF." (228 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	231
NUMBER OF PERSONS WHO CAST BALLOTS	231
BALLOTS SEGREGATED AND NOT COUNTED	4
NUMBER OF SPOILED BALLOTS	2
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	125
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	100

3163-72-R: MARBLE MASONS TILE LAYERS AND TERRAZZO WORKERS UNION NO. 31 (APPLICANT) V. GOLD STAR PLASTERING CO. LTD. (RESPONDENT) V. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (INTERVENER #1) V. THE OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 117 (INTERVENER #2).

UNIT: "ALL PLASTERERS AND PLASTERERS' APPRENTICES OF THE RESPONDENT EMPLOYED AT OR WORKING OUT OF METROPOLITAN TORONTO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (13 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	16
NUMBER OF PERSONS WHO CAST BALLOTS	14
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	13
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER #2	1

3183-72-R: MARBLE MASONS TILE LAYERS AND TERRAZZO WORKERS UNION NO. 31 (APPLICANT) V. EDERE PLASTERING & CONSTRUCTION LTD. (RESPONDENT) V. THE OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 117 (INTERVENER #1) V. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (INTERVENER #2).

UNIT: "ALL PLASTERERS AND PLASTERERS' APPRENTICES OF THE RESPONDENT EMPLOYED AT OR WORKING OUT OF METROPOLITAN TORONTO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (20 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		28
NUMBER OF PERSONS WHO CAST BALLOTS	23	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	19	
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER #1	4	

3204-72-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (APPLICANT) V. TOLEDO SCALE DIVISION RELIANCE ELECTRIC LIMITED (RESPONDENT).

UNIT: "ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT AT 2462 HOWARD AVENUE, WINDSOR, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR; SECRETARY TO VICE-PRESIDENT AND GENERAL MANAGER; SECRETARY TO VICE-PRESIDENT MANUFACTURING; SECRETARY TO ASSISTANT SECRETARY AND TREASURER; TIME STUDY AND METHODS ANALYSTS; GENERAL ACCOUNTANT; STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND EMPLOYEES COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS LOCAL LODGE 1620." (57 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		58
NUMBER OF PERSONS WHO CAST BALLOTS	54	
NUMBER OF BALLOTS SEGREGATED AND NOT COUNTED	2	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	34	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	18	

3205-72-R: MARBLE MASONS TILE LAYERS AND TERRAZZO WORKERS UNION No. 31 (APPLICANT) V. RELIABLE PLASTERING CO. LTD. (RESPONDENT) V. THE OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 117 (INTERVENER).

UNIT: "ALL PLASTERERS AND PLASTERERS' APPRENTICES OF THE RESPONDENT EMPLOYED AT OR WORKING OUT OF METROPOLITAN TORONTO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (20 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		20
NUMBER OF PERSONS WHO CAST BALLOTS	18	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	14	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	4	



3206-72-R: MARBLE MASONS TILE LAYERS AND TERRAZZO WORKERS UNION No. 31 (APPLICANT) v. SUBURBAN PLASTERING CO. LTD. (RESPONDENT) v. THE OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 117 (INTERVENER).

UNIT: "ALL PLASTERERS AND PLASTERERS' APPRENTICES OF THE RESPONDENT EMPLOYED AT OR WORKING OUT OF METROPOLITAN TORONTO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

NUMBER OF PERSONS ON VOTERS' LIST	7
NUMBER OF PERSONS WHO CAST BALLOTS	5
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	4
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	1

3350-72-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) v. DONBAY INDUSTRIES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT NORTH BAY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (31 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	29
NUMBER OF PERSONS WHO CAST BALLOTS	28
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	22
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	6

3382-72-R: THE CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) v. THE ST. CATHARINES GENERAL HOSPITAL (RESPONDENT) v. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 772 (INTERVENER #1) v. SERVICE EMPLOYEES UNION, LOCAL 204, A.F. of L., C.I.O., C.L.C. (INTERVENER #2).

UNIT: "ALL STATIONARY ENGINEERS EMPLOYED IN THE STEAM HEATING PLANT OF THE RESPONDENT AT ST. CATHARINES, SAVE AND EXCEPT THE CHIEF ENGINEER, AND ALL PERSONS ABOVE THE RANK OF CHIEF ENGINEER." (5 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	5
NUMBER OF PERSONS WHO CAST BALLOTS	4
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	3
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER #1	1

3387-72-R: THE NEWSPAPER GUILD (APPLICANT) V. THE SUDBURY STAR (A DIVISION OF THOMSON NEWSPAPER LTD.) (RESPONDENT).

UNIT: "ALL EMPLOYEES IN THE NEWS DEPARTMENT OF THE RESPONDENT AT SUDBURY, SAVE AND EXCEPT MANAGING EDITOR, EDITORIAL PAGE AND NEWS EDITOR, CITY EDITOR, WOMEN'S EDITOR, PHOTOGRAPHIC SUPERVISOR, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (44 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT REPORTERS, DESKMEN, PHOTOGRAPHERS, DARKROOM STAFF AND LIBRARY STAFF ARE INCLUDED IN THE BARGAINING UNIT.).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		36
NUMBER OF PERSONS WHO CAST BALLOTS	36	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	21	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	15	

3390-72-R: THE NEWSPAPER GUILD (APPLICANT) V. THE SUDBURY STAR (A DIVISION OF THOMSON NEWSPAPERS LTD.) (RESPONDENT).

UNIT: "ALL EMPLOYEES IN THE CIRCULATION DEPARTMENT OF THE RESPONDENT AT SUDBURY, SAVE AND EXCEPT CIRCULATION MANAGER, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (16 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON VOTERS'		
LIST		13
NUMBER OF PERSONS WHO CAST BALLOTS	13	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	7	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	6	

3391-72-R: THE NEWSPAPER GUILD (APPLICANT) V. THE SUDBURY STAR (A DIVISION OF THOMSON NEWSPAPERS LTD.) (RESPONDENT).

UNIT: "ALL EMPLOYEES IN THE ACCOUNTING DEPARTMENT OF THE RESPONDENT AT SUDBURY, SAVE AND EXCEPT CHIEF ACCOUNTANT, ASSISTANT CHIEF ACCOUNTANT, PUBLISHER'S CONFIDENTIAL SECRETARIES, PAYROLL CLERK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (11 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON VOTERS'  
LIST

NUMBER OF PERSONS WHO CAST BALLOTS

NUMBER OF BALLOTS MARKED IN FAVOUR  
OF APPLICANT

NUMBER OF BALLOTS MARKED AGAINST  
APPLICANT

7  
7

4

3

3437-72-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. SOO MILL  
AND LUMBER COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SAULT STE. MARIE, SAVE AND EX-  
CEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF,  
CLERKS, OR OVER THE COUNTER SALES CLERKS, AND PERSONS REGULARLY EMPLOYED  
FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE  
SCHOOL VACATION PERIOD." (90 EMPLOYEES IN THE UNIT). (HAVING REGARD TO  
THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON VOTERS'  
LIST

NUMBER OF PERSONS WHO CAST BALLOTS

NUMBER OF SPOILED BALLOTS

NUMBER OF BALLOTS MARKED IN FAVOUR  
OF APPLICANT

NUMBER OF BALLOTS MARKED AGAINST  
APPLICANT

86

79

2

42

35

3475-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506  
(APPLICANT) V. CANADA BUILDING MATERIALS LIMITED (RESPONDENT) V. CHRISTIAN  
LABOUR ASSOCIATION OF CANADA (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING AT OR OUT OF THE TOWNSHIP  
OF PICKERING, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN,  
OFFICE AND SALES STAFF AND SECURITY GUARDS." (42 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED  
VOTERS' LIST

NUMBER OF PERSONS WHO CAST BALLOTS

NUMBER OF SPOILED BALLOTS

NUMBER OF BALLOTS MARKED IN FAVOUR  
OF APPLICANT

NUMBER OF BALLOTS MARKED IN FAVOUR  
OF INTERVENER

40

35

2

33

0

#### APPLICATIONS CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

3185-72-R: LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL  
220, S.E.I.U., A.F.L., C.I.O., C.L.C. (APPLICANT) V. ST. RAPHAEL'S NURS-  
ING HOMES LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).



UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT KITCHENER, ONTARIO, SAVE AND EXCEPT FOREMEN, SUPERVISORS, PERSONS ABOVE THE RANK OF FOREMAN AND SUPERVISOR, PROFESSIONAL NURSING STAFF, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (39 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		39
NUMBER OF PERSONS WHO CAST BALLOTS	33	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	23	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	10	

3293-72-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION 1730 (APPLICANT) V. DRYDEN PUBLIC LIBRARY BOARD (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT HEAD LIBRARIAN AND PERSONS ABOVE THE RANK OF HEAD LIBRARIAN." (7 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTER'S		
LIST		6
NUMBER OF PERSONS WHO CAST BALLOTS	6	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	6	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	0	

3355-72-R: CANADIAN TEXTILE & CHEMICAL UNION (APPLICANT) V. ARTISTIC WOODWORK CO. LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (125 EMPLOYEES IN THE UNIT). (THE BOARD FURTHER DIRECTED IN ITS DECISION DATED APRIL 2ND, 1973 THE ... THAT THE BALLOT BOX CONTAINING THE BALLOTS CAST IN THE SAID REPRESENTATION VOTE SHALL BE SEALED AND THAT THE BALLOTS SHALL NOT BE COUNTED PENDING FURTHER DISPOSITION OF THIS MATTER BY THE BOARD.).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		119
NUMBER OF PERSONS WHO CAST BALLOTS	118	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	76	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	42	

3399-72-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. CLARKSON B.S. & B. COMPANY LIMITED CARRYING ON BUSINESS UNDER THE NAME AND STYLE OF BRITISH UNITED AUTOMOBILES (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE AND SALES STAFF." (54 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	54
NUMBER OF PERSONS WHO CAST BALLOTS	50
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	41
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	9

3420-72-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL 647 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. VILLA NOVA MILK PRODUCTS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF TOWNSEND, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (23 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS'	
LIST	21
NUMBER OF PERSONS WHO CAST BALLOTS	21
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	13
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	8

3439-72-R: UNITED PAPERWORKERS INTERNATIONAL UNION (APPLICANT) V. P.H.A. INDUSTRIES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (29 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	25
NUMBER OF PERSONS WHO CAST BALLOTS	25
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	23
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	2

APPLICATIONS FOR CERTIFICATION DISMISSED DURING APRIL

NO VOTE CONDUCTED

2951-72-R: LABORERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL UNION No. 597 (APPLICANT) v. KONVEY CONSTRUCTION COMPANY LIMITED (RESPONDENT). (5 EMPLOYEES).

2997-72-R: SERVICE EMPLOYEES UNION, LOCAL 204, AFFILIATED WITH THE S.E.I.U., A.F. of L., C.I.O., C.L.C. (APPLICANT) v. YORK TORONTO AMBULANCE (RESPONDENT). (67 EMPLOYEES).

3326-72-R: HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS' INTERNATIONAL UNION, RESTAURANT, CAFETERIA AND TAVERN EMPLOYEES UNION, LOCAL 254 (APPLICANT) v. VS SERVICES LTD. (RESPONDENT). (159 EMPLOYEES).

3363-72-R: OPERATIVE PLASTERER'S AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA LOCAL UNION 124, OTTAWA, ONTARIO (APPLICANT) v. ROCH CAYER LTD. (RESPONDENT). (13 EMPLOYEES).

3421-72-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) v. MORTLOCK CONSTRUCTION (1963) LIMITED (RESPONDENT) v. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 597 (INTERVENER) v. GROUP OF EMPLOYEES (OBJECTORS). (5 EMPLOYEES).

3446-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 607 (APPLICANT) v. SILLMAN COMPANY (NORTHERN) LIMITED (RESPONDENT) v. LUMBER & SAWMILL WORKERS UNION, LOCAL 2693 (INTERVENER) v. GROUP OF EMPLOYEES (OBJECTORS). (7 EMPLOYEES).

3450-72-R: LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 607 (APPLICANT) v. GREAT LAKES NICKEL LIMITED (RESPONDENT). (3 EMPLOYEES).

3460-72-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL 647 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) v. DALKEITH BAKERY (RESPONDENT). (7 EMPLOYEES).

3466-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL UNION #494 (APPLICANT) v. D. R. CRAWFORD CONSTRUCTION LIMITED (RESPONDENT). (6 EMPLOYEES).

3481-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION 493 (APPLICANT) v. NORTHERN MATTAGAMI DEVELOPMENTS LTD. (RESPONDENT). (5 EMPLOYEES).

3521-72-R: CHATHAM CONSTRUCTION WORKERS ASSOCIATION, LOCAL No. 53, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) v. BECHARD FLOOR SANDING (RESPONDENT). (3 EMPLOYEES).



3533-72-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. B.T.F. SERVICE INCORPORATED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (9 EMPLOYEES).

3565-73-R: LABORERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL UNION No. 597 (APPLICANT) V. H. C. MACCALLUM CONTRACTING LIMITED (RESPONDENT). (2 EMPLOYEES).

3603-73-R: ONTARIO HOSPITAL SCHOOL TEACHERS' ASSOCIATION (APPLICANT) V. THE GOVERNMENT OF ONTARIO (MINISTRY OF EDUCATION) c/o MR. J. F. KINLIN (CHAIRMAN - SCHOOL MANAGEMENT COMMITTEE) ASSISTANT DEPUTY MINISTER, EDUCATION DEVELOPMENT DIVISION, 22 FLR., MOWAT BLOCK (RESPONDENT). (230 EMPLOYEES).

CERTIFICATION DISMISSED SUBSEQUENT TO PRE-HEARING VOTE

3134-72-R: UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL CIO CLC (APPLICANT) V. CANADYLET-CLOSURES DIVISION, INSILCO CORPORATION CANADA LIMITED (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT BARRIE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (96 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	93
NUMBER OF PERSONS WHO CAST BALLOTS	87
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	35
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	52

3392-72-R: THE NEWSPAPER GUILD (APPLICANT) V. THE SUDBURY STAR (A DIVISION OF THOMSON NEWSPAPER LTD.) (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES IN THE ADVERTISING DEPARTMENT OF THE RESPONDENT AT SUDBURY, SAVE AND EXCEPT CLASSIFIED ADVERTISING MANAGER, RETAIL ADVERTISING MANAGER, GENERAL ADVERTISING MANAGER, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (24 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON VOTERS'	
LIST	23
NUMBER OF PERSONS WHO CAST BALLOTS	23
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	10
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	13

3397-72-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. HOMCO INDUSTRIES LTD. (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF WESTMEATH, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (54 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	55
NUMBER OF PERSONS WHO CAST BALLOTS	55
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	13
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	42

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

3138-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) V. MATINEE FURNITURE SHOWROOM (OTTAWA) LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE CITIES OF OTTAWA AND VANIER, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, SALESMEN, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (14 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	8
NUMBER OF PERSONS WHO CAST BALLOTS	8
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	3
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	5

3224-72-R: LOCAL UNION 278 INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA A.F.L.,-C.I.O.,-C.L.C. (APPLICANT) V. CANADA DRY BOTTLING COMPANY (WINDSOR) LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT #2: "ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK, SAVE AND EXCEPT FOREMEN, SUPERVISORS, PERSONS ABOVE THE RANK OF FOREMAN AND SUPERVISOR AND OFFICE STAFF." (4 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTER'S LIST		3
NUMBER OF PERSONS WHO CAST BALLOTS	3	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	0	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	3	

(BARGAINING UNIT #1 - SEE BARGAINING UNITS CERTIFIED - NO VOTE CONDUCTED).

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING APRIL

3528-72-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION 721 (APPLICANT) V. AMALGAMATED METAL INDUSTRIES LTD. (RESPONDENT) V. INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS, BLACKSMITHS, FORGERS AND HELPERS, (AFL-CIO) (INTERVENER). (5 EMPLOYEES).

3520-72-R: SERVICE EMPLOYEES UNION, LOCAL 204, AFFILIATED WITH THE A.F. OF L., C.I.O., C.L.C. (APPLICANT) V. EXTENDICARE (CANADA) LTD. (RESPONDENT). (141 EMPLOYEES).

3522-72-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. TOWLAND HEWITSON CONSTRUCTION LIMITED (RESPONDENT). (7 EMPLOYEES).

3530-72-R: LOCAL UNION 666, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. McDERMOTT CONSTRUCTION COMPANY LTD. (RESPONDENT). (6 EMPLOYEES).

3540-72-R: LABORERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 607 (APPLICANT) V. INSPIRATION DRILLING (DIVISION OF DRESSER INDUSTRIES CANADA LIMITED) (RESPONDENT). (25 EMPLOYEES).

3555-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (APPLICANT) V. CANADIAN TIRE CORPORATION LTD. (RESPONDENT). (2 EMPLOYEES).

3579-73-R: OPTICAL & PLASTIC TECHNICIANS & ALLIED WORKERS UNION - LOCAL 67 OF U.H.C. & M.W.I.U. - C.L.C. (APPLICANT) V. IMPERIAL OPTICAL COMPANY LIMITED (RESPONDENT). (9 EMPLOYEES).

3594-73-R: CANADIAN FOOD AND ALLIED WORKERS LOCAL UNION 175, CHARTERED BY THE AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA (APPLICANT) V. INTERCITY FOOD SERVICES INC. (RESPONDENT). (13 EMPLOYEES).

3655-73-R: OPERATIVE PLASTERER'S AND CEMENT MASON'S INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA LOCAL UNION NO. 124 OTTAWA (APPLICANT) V. ISBISTER RESTORATION LTD. (RESPONDENT). (2 EMPLOYEES).



3674-73-R: OFFICE & PROFESSIONAL EMPLOYEES INTERNATIONAL UNION (APPLICANT) V. SILVERWOOD DAIRIES LTD. DIVISION OF SILVERWOOD INDUSTRIES LIMITED, AND SILVERWOOD INDUSTRIES LTD. (RESPONDENT). (60 EMPLOYEES).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED OF  
DURING APRIL

2654-72-R: BARRY SHARPE (APPLICANT) V. UNITED STEELWORKERS OF AMERICA (RESPONDENT) V. WOLFE TRANSMISSION LIMITED (INTERVENER). (DISMISSED).

UNIT: "ALL EMPLOYEES OF WOLFE TRANSMISSION LIMITED IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN AND DEPOT MANAGERS, PERSONS ABOVE THE RANK OF FOREMAN OR DEPOT MANAGER, OFFICE AND SALES STAFF." (78 EMPLOYEES IN THE UNIT). (FOR THE PURPOSES OF CLARITY THE BOARD NOTED THAT WORKING FOREMEN ARE INCLUDED IN THE BARGAINING UNIT.).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		66
NUMBER OF PERSONS WHO CAST BALLOTS	67	
BALLOTS SEGREGATED AND NOT COUNTED	1	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF RESPONDENT	40	
NUMBER OF BALLOTS MARKED AGAINST		
RESPONDENT	26	

2844-72-R: PAUL HURST (APPLICANT) V. RETAIL CLERKS INTERNATIONAL ASSOCIATION (RESPONDENT). (GRANTED).

UNIT: "ALL EMPLOYEES OF BELTON-QUINN LUMBER LIMITED AT GUELPH, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (12 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		11
NUMBER OF PERSONS WHO CAST BALLOTS	10	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF RESPONDENT	0	
NUMBER OF BALLOTS MARKED AGAINST		
RESPONDENT	10	

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING  
APRIL

3511-72-U: THE ONTARIO FOOD DIVISION OF THE OSHAWA GROUP LIMITED (APPLICANT) V. WAREHOUSEMEN AND MISCELLANEOUS DRIVERS UNION LOCAL 419 (RESPONDENT). (WITHDRAWN).

3512-72-U: THE ONTARIO FOOD DIVISION OF THE OSHAWA GROUP LIMITED (APPLICANT) V. MARCEL AMATO ET AL (RESPONDENTS). (WITHDRAWN).

3591-73-U: BABCOCK & WILCOX CANADA LIMITED (APPLICANT) V. THOSE PERSONS NAMED IN SCHEDULE "A" ATTACHED HERETO (RESPONDENTS). (WITHDRAWN).

APPLICATION FOR DECLARATION THAT LOCK-OUT UNLAWFUL DISPOSED OF DURING

APRIL

3271-72-U: MELDRUM R. GAREAU (APPLICANT) V. THE CIVIL SERVICE ASSOCIATION OF ONTARIO (INC.) (RESPONDENT). (DISMISSED).

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APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING APRIL

3401-72-U: NATIONAL ASSOCIATION OF BROADCAST EMPLOYEES AND TECHNICIANS, AFL-CIO, CLC (APPLICANT) V. WILFRED CULLEY AND INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE MACHINE OPERATORS OF THE UNITED STATES AND CANADA MOTION PICTURE STUDIO PRODUCTION TECHNICIANS, LOCAL 873 (RESPONDENTS). (WITHDRAWN).

3424-72-U: BRYCE MUGFORD (APPLICANT) V. THAMES VALLEY BEVERAGES LIMITED (RESPONDENT). (GRANTED).

3425-72-U: JOHN ROUSSEL (APPLICANT) V. THAMES VALLEY BEVERAGES LIMITED (RESPONDENT). (GRANTED).

3426-72-U: PETER O'BRIAN (APPLICANT) V. THAMES VALLEY BEVERAGES LIMITED (RESPONDENT). (DISMISSED).

3427-72-U: VERNON FORSYTHE (APPLICANT) V. THAMES VALLEY BEVERAGES LIMITED (RESPONDENT). (DISMISSED).

3428-72-U: DANIEL LAMONT (APPLICANT) V. THAMES VALLEY BEVERAGES LIMITED (RESPONDENT). (DISMISSED).

3454-72-U: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. KMW PRODUCTS LIMITED (RESPONDENT). (GRANTED).

3463-72-U: MOTO-MOWER OF CANADA (APPLICANT) V. UNITED STEELWORKERS OF AMERICA AND ITS LOCAL #6439, WILLIAM NOELS, PRESIDENT, LOCAL #6439, JOHN HUSNIK, COMMITTEEMAN, LOCAL #6439 (RESPONDENTS). (WITHDRAWN).

3476-72-U: EDWARD REIDHEAD (APPLICANT) V. THAMES VALLEY BEVERAGES LIMITED (RESPONDENT). (GRANTED).

3477-72-U: KARL PURDON (APPLICANT) V. THAMES VALLEY BEVERAGES LIMITED (RESPONDENT). (GRANTED).

3510-72-U: THE ONTARIO FOOD DIVISION OF THE OSHAWA GROUP LIMITED (APPLICANT) V. WAREHOUSEMEN AND MISCELLANEOUS DRIVERS UNION LOCAL 419 (RESPONDENT). (DISMISSED).

3513-72-U: THE ONTARIO FOOD DIVISION OF THE OSHAWA GROUP LIMITED (APPLICANT) V. MARCEL AMATO ET AL. (RESPONDENTS). (DISMISSED).

3527-72-U: INTERNATIONAL ASSOCIATION OF BRIDGE STRUCTURAL AND ORNAMENTAL IRONWORKERS OF LOCAL 765 (APPLICANT) V. JOHN STEEL LTD. (RESPONDENT). (WITHDRAWN).

3592-73-U: BABCOCK & WILCOX CANADA LIMITED (APPLICANT) V. THOSE PERSONS NAMED IN SCHEDULE "A" ATTACHED HERETO (RESPONDENTS). (WITHDRAWN).

COMPLAINTS UNDER SECTION 79 (UNFAIR LABOUR PRACTICE) DISPOSED OF DURING

APRIL

2490-72-U: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (COMPLAINANT) V. EMPIRE PUBLIC HOUSE (RESPONDENT). (DISMISSED).

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2594-72-U: CONRAD ADAM (COMPLAINANT) V. STEED AND EVANS LIMITED (RESPONDENT). (DISMISSED).

2853-72-U: UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA AFL-CIO-CLC (COMPLAINANT) V. CANADYLET - CLOSURES LIMITED (RESPONDENT). (WITHDRAWN).

2891-72-U: INTERNATIONAL WOODWORKERS OF AMERICA (COMPLAINANT) V. PAT-CHOCUE PLYMOUTH HAWKESBURY MILLS, DIVISION OF AMOCO CANADA PETROLEUM COMPANY LTD. (RESPONDENT). (DISMISSED).

2930-72-U: MOHAMED SALAH GUINDEHI (COMPLAINANT) V. UNITED STEELWORKERS OF AMERICA LOCAL UNICN NO. 7608 (RESPONDENT). (DISMISSED).

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3039-72-U: LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, S.E.I.U., A.F.L. - C.I.O. - C.L.C. (COMPLAINANT) V. KOMOKA NURSING HOMES LIMITED (RESPONDENT). (GRANTED).

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3044-72-U: LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, S.E.I.U., A.F.L.-C.I.O.-C.L.C. (COMPLAINANT) V. KOMOKA NURSING HOMES LIMITED (RESPONDENT). (DISMISSED).

3207-72-U: LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, S.E.I.U., A.F.L.-C.I.O.-C.L.C. (COMPLAINANT) V. BONNIE BRAE NURSING HOME LIMITED (RESPONDENT). (GRANTED).

3267-72-U: UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL-CIO-CLC (COMPLAINANT) V. CANADIAN SKATE INDUSTRIES DIVISION OF JELINEK SPORTS LIMITED (RESPONDENT). (WITHDRAWN).

3270-72-U: CANADIAN TEXTILE & CHEMICAL UNION (COMPLAINANT) V. SHIRT TALES OF CANADA LIMITED (RESPONDENT). (WITHDRAWN).

3282-72-U: BOGDAN BIELECKI (COMPLAINANT) V. UNITED STEELWORKERS OF AMERICA (RESPONDENT). (WITHDRAWN).

3323-72-U: LOCAL 278, INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA - AFL-CIO-CLC (COMPLAINANT) V. CANADA DRY BOTTLING COMPANY (WINDSOR) LTD. (RESPONDENT). (WITHDRAWN).

3337-72-U: LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, S.E.I.U., A.F.L., C.I.O., C.L.C. (COMPLAINANT) V. BONNIE BRAE NURSING HOME LIMITED, TAVISTOCK, ONTARIO (RESPONDENT). (WITHDRAWN).

3342-72-U: KENNETH A. TRINDER (COMPLAINANT) V. RETAIL WHOLESALE AND DEPARTMENT STORE UNION A.F.L. C.I.O. C.L.C. AND CASWELL DAIRY (OWNED BY BEATRICE FOODS) (RESPONDENTS). (DISMISSED).

3486-72-U: PETER E. CLEMENT (COMPLAINANT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, HOISTING DIVISION, LOCAL 793 AND PHILLIZ GAUTHIER, BUSINESS AGENT FOR BELLEVILLE AREA (RESPONDENT). (WITHDRAWN).

3507-72-U: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (COMPLAINANT) V. C. P. CLARE CANADA (RESPONDENT). (WITHDRAWN).

3580-73-U: STANLEY DWYER, 3 RAPALLO MEWS, STREETSVILLE, ONTARIO (COMPLAINANT) V. KENNETH J. CALVER, 6 BEECH ST., BRAMPTON, ONTARIO (RESPONDENT). (WITHDRAWN).

3625-73-U: CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) V. ONTARIO SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS COMMONLY KNOWN AS ONTARIO HUMANE SOCIETY (RESPONDENT). (WITHDRAWN).

APPLICATION UNDER SECTION 37(3) DISPOSED OF DURING APRIL

3322-72-M: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, LOCAL 1285 (U.A.W.) (APPLICANT) V. AMERICAN MOTORS (CANADA) LIMITED (RESPONDENT). (GRANTED).

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ONTARIO LABOUR RELATIONS BOARD REPORTS

A MONTHLY SERIES OF DECISIONS FROM THE

ONTARIO LABOUR RELATIONS BOARD

CITED [1973] OLRB REP.



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HUTCHISON MECHANICAL INSTALLATIONS LTD. v. UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL UNION 527 AND JACK PORTER AND TOM CRYSTAL.....

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5. THE BOARD DIRECTS THAT A REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES OF C.H. HEIST (CANADA) LIMITED. THOSE ELIGIBLE TO VOTE ARE ALL EMPLOYEES OF C.H. HEIST (CANADA) LIMITED WORKING OUT OF THE EMPLOYER'S SARNIA OFFICE IN THE HYDRAULIC HIGH PRESSURE WATER CLEANING PROCESSES SAVE AND EXCEPT EXECUTIVE OFFICERS, OFFICE STAFF, SALARIED EMPLOYEES AND THOSE ABOVE THE RANK OF FOREMAN WITH THE RIGHT TO HIRE AND FIRE ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN.

6. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BE REPRESENTED BY THE RESPONDENT IN THEIR EMPLOYMENT RELATIONS WITH C.H. HEIST (CANADA) LIMITED.

7. THE MATTER IS REFERRED TO THE REGISTRAR.

3573-73-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. ILSCO OF CANADA LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS H. ADE AND E. BOYER.

DECISION OF THE BOARD: MAY 1, 1973.

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2. THIS IS AN APPLICATION FOR CERTIFICATION WHEREIN THE APPLICANT REQUESTED THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN. FOLLOWING THE POSTING OF THE NOTICE TO EMPLOYEES OF APPLICATION AND REQUEST FOR PRE-HEARING VOTE (FORM 6) CERTAIN EMPLOYEES OF THE RESPONDENT FILED A STATEMENT OF OBJECTIONS AND DESIRE TO MAKE REPRESENTATIONS. THE EMPLOYEES WERE REPRESENTED AT THE PRE-HEARING VOTE MEETING, HOWEVER, THE APPLICANT OBJECTED TO THEIR PRESENCE. FOLLOWING THE PRE-HEARING VOTE MEETING THE APPLICANT BY LETTER DATED APRIL 25, 1973 PROTESTED THE PARTICIPATION OF THE OBJECTING EMPLOYEES IN THE PROCEEDINGS.

3. EVEN THOUGH FORM 6 DOES NOT INVITE EMPLOYEES TO OBJECT TO AN APPLICATION FOR CERTIFICATION WHERE A PRE-HEARING VOTE IS REQUESTED, THE EMPLOYEES WHO ARE AFFECTED BY THIS APPLICATION ARE INTERESTED PERSONS AND HAVE A RIGHT TO INTERVENE IN AN APPLICATION FOR CERTIFICATION BY FILING A STATEMENT OF OBJECTIONS IN THE SAME MANNER AS OBJECTING EMPLOYEES HAVE A RIGHT TO PARTICIPATE IN AN APPLICATION FOR CERTIFICATION WHERE NO PRE-HEARING REPRESENTATION VOTE IS REQUESTED IN ACCORDANCE WITH THE INVITATION SET OUT IN FORM 5 OF THE BOARD'S RULES OF PROCEDURE. IT IS RECOGNIZED THAT THE USUAL INTEREST OF OBJECTING EMPLOYEES IS TO OBTAIN A REPRESENTATION VOTE IN AN APPLICATION FOR CERTIFICATION. HOWEVER, THE INTEREST OF EMPLOYEES IS NOT MERELY LIMITED TO REQUESTING THAT A REPRESENTATION VOTE BE TAKEN. OBJECTING EMPLOYEES ALSO HAVE AN INTEREST IN MAKING REPRESENTATIONS WITH RESPECT TO THE APPROPRIATENESS OF THE BARGAINING UNIT

AND ALL OTHER ISSUES THAT MIGHT BE RAISED IN THE CERTIFICATION PROCEEDINGS. IN ANY EVENT, EVEN THOUGH THE APPLICANT HAS REQUESTED THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN IN THE INSTANT APPLICATION, OBJECTING EMPLOYEES HAVE A RIGHT TO PARTICIPATE AS A PARTY IN THESE PROCEEDINGS AND ACCORDINGLY HAVE A RIGHT TO BE REPRESENTED AT THE TAKING OF THE REPRESENTATION VOTE BY APPOINTING A SCRUTINEER. IN ANY APPLICATION FOR CERTIFICATION WHERE OBJECTING EMPLOYEES REQUEST AN OPPORTUNITY TO BE HEARD THEY ARE A PARTY TO THE PROCEEDINGS AND HAVE THE SAME RIGHTS AS ANY OTHER PARTY.

4. ACCORDINGLY, IN THIS MATTER THE OBJECTING EMPLOYEES HAVE THE RIGHT TO PARTICIPATE IN THE VOTING ARRANGEMENTS AND APPOINT SCRUTINEERS IN THE SAME MANNER AS THE APPLICANT AND THE RESPONDENT.

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9. COUNSEL FOR THE RESPONDENT REQUESTED THAT THE NOTICES FOR THE TAKING OF THE REPRESENTATION VOTE BE PRINTED IN PORTUGUESE AS WELL AS IN ENGLISH. THE BOARD IS NOT PREPARED TO ACCEDE TO THE RESPONDENT'S REQUEST IN THIS REGARD. THE PARTIES WILL HAVE TO ASSUME THE RESPONSIBILITY OF EXPLAINING THE NATURE OF THESE PROCEEDINGS AND THE VOTE ARRANGEMENTS TO THE EMPLOYEES WHO ARE UNABLE TO UNDERSTAND THE NOTICES PUBLISHED AND THE FORM OF BALLOT USED PURSUANT TO THE BOARD'S RULES OF PROCEDURE AND REGULATIONS. THE BOARD CANNOT ACCEPT RESPONSIBILITY FOR THE INABILITY OF ANY PERSON WHO IS ENTITLED TO VOTE TO READ AND UNDERSTAND THE ENGLISH LANGUAGE ANY MORE THAN THE BOARD CAN ACCEPT RESPONSIBILITY FOR EMPLOYEES WHO ARE ILLITERATE AND ARE UNABLE TO READ IN ANY LANGUAGE WHATSOEVER. THE BOARD IS REQUIRED TO FOLLOW THE FORM OF NOTICES AND BALLOTS WHICH ARE SET OUT IN THE BOARD'S RULES OF PROCEDURE AND REGULATIONS, ALL OF WHICH DOCUMENTS ARE IN THE ENGLISH LANGUAGE. IF THE PARTIES HAVE ANY REAL CONCERN ABOUT THE ABILITY OF EMPLOYEES TO UNDERSTAND THE NATURE AND INTENT OF SUCH DOCUMENTS THEY ARE AT LIBERTY TO AGREE TO PUBLISH AN APPROPRIATE TRANSLATION OF THE DOCUMENTS OR ANY OTHERWISE EXPLAIN TO THE EMPLOYEES THE NATURE AND PROCEDURE OF THE REPRESENTATION VOTE. IT HAS BEEN THE BOARD'S EXPERIENCE OVER A GREAT MANY YEARS THAT NO REAL HARDSHIP IS CREATED BY THE USE OF THE ENGLISH LANGUAGE IN THE PUBLICATION OF THE BOARD'S NOTICES OR IN REPRESENTATION VOTES AND THE BOARD IS SATISFIED THAT THE USE OF THE ENGLISH LANGUAGE HAS PERMITTED THE BOARD TO ASCERTAIN THE TRUE WISHES OF EMPLOYEES IN ALL SUCH REPRESENTATION VOTES.

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11. THE MATTER IS REFERRED TO THE REGISTRAR.

3609-73-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, Local 837  
(APPLICANT) v. NIAGARA DIVISION OF STEED AND EVANS LIMITED (RESPONDENT).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS H. J. F. ADE AND E. BOYER.

DECISION OF R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBER E. BOYER:  
MAY 1, 1973.

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3. THE RESPONDENT FILED A REPLY, A LIST CONTAINING THE NAMES OF TEN EMPLOYEES ON SCHEDULE A AND 14 EMPLOYEES ON SCHEDULE C AND SPECIMEN SIGNATURES WITHIN THE TIME FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE. THE NAMES WHICH APPEAR ON THE FIVE CERTIFICATES OF MEMBERSHIP AND TWO APPLICATIONS FOR MEMBERSHIP ACCOMPANIED BY RECEIPTS FILED BY THE APPLICANT CORRESPOND TO SEVEN OF THE TEN NAMES APPEARING ON SCHEDULE A.

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7. THE RESPONDENT HAS REQUESTED A HEARING OF THIS APPLICATION BY THE BOARD AND IN SUPPORT OF THIS REQUEST HAS STATED:

THERE ARE A NUMBER OF PERSONNEL AS  
OUTLINED IN SCHEDULE C THAT SHOULD  
BE CONSIDERED IN THE BARGAINING UNIT  
AND THEIR WISHES AS TO REPRESENTATION  
SHOULD BE CONSIDERED.

8. WE HAVE CONSIDERED THESE REPRESENTATIONS OF THE RESPONDENT. AT THE TIME THE APPLICATION WAS MADE THERE WERE TEN EMPLOYEES IN THE BARGAINING UNIT WHO WERE AT WORK AND FOURTEEN ADDITIONAL PERSONS WHO WERE REGARDED BY THE RESPONDENT AS ITS EMPLOYEES. THESE FOURTEEN EMPLOYEES HAD BEEN LAID OFF BETWEEN OCTOBER 30, 1972 AND JANUARY 3, 1973. THIS APPLICATION WAS FILED ON APRIL 13, 1973. IT IS BY NO MEANS UNCOMMON FOR AN EMPLOYER IN THE CONSTRUCTION INDUSTRY TO HAVE FLUCTUATIONS IN THE NUMBER OF EMPLOYEES WHO ARE ACTUALLY AT WORK. IT IS BECAUSE OF THE FLUCTUATING NATURE OF THE WORK FORCE AND THE CHANGE IN THE NUMBER OF EMPLOYEES WHO MAY BE AT WORK AT ANY GIVEN POINT IN TIME, THAT WE ARE TAKING THE NUMBER OF EMPLOYEES IN THE BARGAINING UNIT, WHO WERE ACTUALLY AT WORK ON THE DATE OF THE MAKING OF THE APPLICATION FOR CERTIFICATION, AS THE NUMBER OF EMPLOYEES FOR THE PURPOSES OF THE COUNT UNDER SECTION 7 OF THE LABOUR RELATIONS ACT.

9. WE ALSO POINT OUT THAT IN DETERMINING WHETHER A TRADE UNION TO WHICH SECTION 108(1) OF THE LABOUR RELATIONS ACT APPLIES HAS MET THE REQUIREMENTS OF SECTION 7(2), THE BOARD NEED NOT HAVE REGARD TO ANY INCREASE IN THE NUMBER OF EMPLOYEES IN THE BARGAINING UNIT AFTER THE APPLICATION WAS MADE. THIS IS PARTICULARLY PERTINENT TO THE CIRCUMSTANCES OF THIS APPLICATION WHERE THE RESPONDENT HAS SUPPLIED CERTAIN INFORMATION SOLELY RELATING TO EXPECTED DATES OF RECALL. REFERENCE IS MADE TO SECTION 108(2) OF THE LABOUR RELATIONS ACT.

10. IN APPLICATIONS FOR CERTIFICATION FILED UNDER THE CONSTRUCTION INDUSTRY PROVISIONS OF THE LABOUR RELATIONS ACT, THE BOARD NEED NOT HOLD A HEARING. REFERENCE IS MADE TO SECTION 91(13) OF THE LABOUR RELATIONS



ACT. WE HAVE CONSIDERED THE REPRESENTATIONS OF THE RESPONDENT AND ARE OF THE OPINION THAT NO USEFUL PURPOSE WOULD BE SERVED IN HOLDING A HEARING OF THIS APPLICATION. ACCORDINGLY, THE REQUEST OF THE RESPONDENT FOR A HEARING OF THIS APPLICATION IS DENIED. IN THE EVENT THAT THE RESPONDENT IS OF THE OPINION THAT THE BOARD HAS ERRED IN A MATERIAL RESPECT, IT IS OPEN TO THE RESPONDENT TO REQUEST THE BOARD TO RECONSIDER ITS DECISION PURSUANT TO SECTION 95(1) OF THE LABOUR RELATIONS ACT.

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12. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DISSENT OF BOARD MEMBER H. J. F. ADE: MAY 1, 1973.

I DISSENT:

WITH RESPECT I MUST DISAGREE WITH THE DECISION OF MY COLLEAGUES TO NOT ALLOW A HEARING IN THIS MATTER. TO DETERMINE IN THE FACE OF THE RESPONDENT'S REPLY, THAT "NO USEFUL PURPOSE WOULD BE SERVED IN HOLDING A MEETING" IS IN MY VIEW TO SUMMARILY REJECT THE RIGHTS OF EMPLOYEES WHOSE RECALL WAS APPARENTLY IMMINENT AS OF THE DATE THIS MATTER WAS DEALT WITH BY THE BOARD. I BELIEVE THAT A HEARING SHOULD HAVE BEEN HELD IN ORDER THAT FULL REPRESENTATION BY THE PARTIES COULD HAVE BEEN MADE WITH FULL DISCLOSURE OF ALL THE FACTS, AND DUE CONSIDERATION GIVEN TO THE PECULIAR NATURE OF THE ROAD-BUILDING SECTOR OF THE CONSTRUCTION INDUSTRY.

3573-73-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. ILSCO OF CANADA LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS H. ADE AND E. BOYER.

DECISION OF THE BOARD:

MAY 2, 1973.

1. THE RESPONDENT BY LETTER DATED APRIL 30, 1973 HAS MADE CERTAIN ALLEGATIONS WITH RESPECT TO THE APPLICANT'S MEMBERSHIP EVIDENCE. THE RESPONDENT HAS ALLEGED THAT ONE OF THE APPLICANT'S MEMBERSHIP EVIDENCE WAS OBTAINED BY FORGERY AND ANOTHER WAS OBTAINED BY WAY OF EXTORTION. THE ALLEGATION OF FORGERY RELATES TO AN EMPLOYEE NAMED RANDY BARBER. A PERUSAL OF THE APPLICANT'S MEMBERSHIP EVIDENCE, HOWEVER, DISCLOSES THAT RANDY BARBER HAS NOT BEEN CLAIMED BY THE APPLICANT AS A MEMBER AND THEREFORE THE ALLEGATION OF FORGERY WITH RESPECT TO RANDY BARBER IS WITHOUT FOUNDATION.

2. THE RESPONDENT HAS FURTHER ALLEGED THAT A MEMBERSHIP CARD SUBMITTED ON BEHALF OF ALMA TAYLOR WAS OBTAINED WHEN AN UNNAMED UNION REPRESENTATIVE SOLD ALMA TAYLOR AN IRISH SWEEPSTAKE TICKET. IT IS ALLEGED THAT SUBSEQUENTLY WHEN ALMA TAYLOR ATTEMPTED TO OBTAIN A RECEIPT FOR THE SWEEPSTAKE TICKET SHE WAS ADVISED THAT SHE COULDN'T HAVE IT UNLESS SHE

SIGNED AN APPLICATION FOR MEMBERSHIP IN THE UNION. THE ALLEGATION WITH RESPECT TO ALMA TAYLOR IS NOT AN ALLEGATION OF "NON-PAY" BUT IS AN ALLEGATION OF UNDUE INFLUENCE. ACCORDINGLY, THE PROCEDURE OUTLINED BY THE BOARD IN THE ALCAN-COLONY LIMITED CASE, OLRB MONTHLY REPORT, JUNE 1963, P. 159, WOULD APPEAR TO BE APPLICABLE. ACCORDINGLY, THE BOARD WILL NOT CONDUCT THE USUAL INQUIRY CONDUCTED IN INSTANCES WHERE A "NON-PAY" ALLEGATION IS MADE. THE ONUS OF ADDUCING EVIDENCE OF THE IMPROPER CONDUCT ALLEGED BY THE RESPONDENT RESTS UPON THE RESPONDENT.

3. THE BOARD ACCORDINGLY DIRECTS THE REGISTRAR TO CAUSE THE BALLOT BOX CONTAINING ALL THE BALLOTS CAST IN THE PRE-HEARING REPRESENTATION VOTE WHICH HAS BEEN DIRECTED IN THIS MATTER TO BE SEALED PENDING THE FURTHER DIRECTION OF THE BOARD. THE REGISTRAR IS FURTHER DIRECTED TO LIST THIS MATTER FOR HEARING FOLLOWING THE TAKING OF THE PRE-HEARING REPRESENTATION VOTE TO AFFORD THE RESPONDENT AN OPPORTUNITY TO ADDUCE EVIDENCE WITH RESPECT TO THE ISSUE RAISED IN ITS LETTER OF APRIL 30, 1973 WITH RESPECT TO ALMA TAYLOR.

3127-72-R: LOCAL UNION 633 AND LOCAL UNION 175 CANADIAN FOOD AND ALLIED WORKERS CHARTERED BY AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANTS) v. ZEHRS MARKETS LIMITED (RESPONDENT) v. BUSY B DISCOUNT FOODS LIMITED (INTERVENER) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: T.E. ARMSTRONG, V. PATHE AND D. SEXTON FOR THE APPLICANTS; W. GIBSON GRAY, Q.C., V. BARNETT AND H. HARTMAN FOR THE RESPONDENT; ON ONE APPEARING FOR THE INTERVENER; DOUGLAS B. SINNAMON FOR THE GROUP OF EMPLOYEES.

DECISION OF O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBER O. HODGES: MAY 3, 1973.

1. THIS IS AN APPLICATION PURSUANT TO SECTION 55 OF THE LABOUR RELATIONS ACT WHEREIN THE APPLICANTS ALLEGE THAT THEY HOLD BARGAINING RIGHTS FOR EMPLOYEES OF THE RESPONDENT WHICH ARISE AS THE RESULT OF A SALE OF A BUSINESS BY THE INTERVENER BUSY B DISCOUNT FOODS LIMITED (HEREINAFTER REFERRED TO AS "BUSY B") TO THE RESPONDENT.

2. AT THE COMMENCEMENT OF THE HEARING IT WAS SUBMITTED BY COUNSEL FOR THE RESPONDENT THAT ASSUMING THAT THE BOARD WERE TO FIND THAT THERE HAD BEEN A SALE OF A BUSINESS WITHIN THE MEANING OF THE ACT THAT THE BARGAINING RIGHTS WOULD NOT CONTINUE. ACCORDINGLY, IT WAS AGREED BY COUNSEL THAT THAT ISSUE WOULD BE ARGUED AT THE OUTSET, AND THAT FOR THE PURPOSE OF ARGUMENT THE BOARD WOULD ASSUME THERE HAD BEEN A SALE OF BUSINESS. IT WAS FURTHER AGREED THAT IF THE BOARD DETERMINED THAT BARGAINING RIGHTS MIGHT FLOW, THEN THERE WOULD BE A FURTHER HEARING TO DEAL WITH THE MERITS OF THE CASE, AND WHETHER IN FACT THERE HAD BEEN A SALE OF BUSINESS.

3. IN 1964 THE APPLICANTS WERE CERTIFIED FOR EMPLOYEES OF THE INTERVENER, BUSY B AT 101 KING STREET SOUTH IN WATERLOO. THEY THEN ENTERED INTO SUCCESSIVE COLLECTIVE AGREEMENTS WITH BUSY B; THE MOST RECENT COLLECTIVE AGREEMENTS COVERED ALL THE EMPLOYEES AT THE STORE. THESE AGREEMENTS CONTINUED IN EFFECT UNTIL JULY 1, 1972 - HOWEVER, THE DURATION CLAUSE AND THE EXACT TERM OF THE AGREEMENT IS IN ISSUE AND THOSE CLAUSES WILL BE DISCUSSED MORE FULLY LATER IN THESE REASONS.

4. IT WAS AGREED THAT THE INTERVENER BUSY B CLOSED ITS DOORS TO THE PUBLIC ON JANUARY 28, 1972, AND THAT THE RESPONDENT ZEHRS MARKETS LIMITED (HEREINAFTER REFERRED TO AS "ZEHRS") OPENED ITS DOORS TO THE PUBLIC ON NOVEMBER 1, 1972. THERE MAY HAVE BEEN CERTAIN OTHER ACTIVITY AT THOSE STORES BETWEEN THOSE DATES ASSOCIATED WITH THE CLOSING AND OPENING, BUT INsofar AS THE PRESENT ISSUE IS CONCERNED THAT IS NOT MATERIAL.

5. THE APPLICANTS AND BUSY B HAD BEEN NEGOTIATING FOR A NEW COLLECTIVE AGREEMENT AND WERE IN CONCILIATION ON NOVEMBER 1, 1972, WHICH WAS THE DATE OF THE OPENING OF THE ZEHRS STORE. THEY REACHED AN AGREEMENT ON DECEMBER 4, 1972, AND IT WAS AGREED BETWEEN THEM THAT IF THE STORE AT 101 KING STREET SOUTH IN WATERLOO (WHICH IS PRESENTLY THE ZEHRS STORE) WAS REOPENED AT THAT ADDRESS BY BUSY B, THAT BUSY B WOULD RECOGNIZE THE APPLICANTS AS BARGAINING AGENT FOR EMPLOYEES AT THE STORE. WE NOTE HERE THAT THE NAME OF THE EMPLOYER IN THE COLLECTIVE AGREEMENT DATED DECEMBER 4, 1972, IS LOBLAW GROCETERIAS Co., LIMITED, AND IT WAS AGREED THAT NOTHING TURNS ON THAT FACT BECAUSE OF THE CORPORATE RELATIONSHIP BETWEEN BUSY B AND LOBLAW GROCETERIAS Co., LIMITED.

6. ON NOVEMBER 15, 1972, THE APPLICANTS WROTE TO ZEHRS AND ASSERTED THEIR BARGAINING RIGHTS UNDER SECTION 55 OF THE LABOUR RELATIONS ACT, AND ON NOVEMBER 30, 1972, ZEHRS REPLIED SAYING NO SALE OF BUSINESS HAD OCCURRED AND DENIED THE APPLICANTS BARGAINING RIGHTS. THIS APPLICATION WAS THEN BROUGHT.

7. THE RESPONDENT, ZEHRS, SUBMITS THAT EVEN IF THERE WAS A SALE OF BUSINESS BETWEEN JULY 1, 1972, AND NOVEMBER 15, 1972, THE PROVISIONS OF SECTION 55 OF THE ACT DO NOT ENTITLE THE APPLICANTS TO CLAIM BARGAINING RIGHTS FOR EMPLOYEES OF ZEHRS. THE RELEVANT PROVISIONS OF THE ACT ARE AS FOLLOWS:

55.-(2) WHERE AN EMPLOYER WHO IS BOUND BY OR IS A PARTY TO A COLLECTIVE AGREEMENT WITH A TRADE UNION OR COUNCIL OF TRADE UNIONS SELLS HIS BUSINESS, THE PERSON TO WHOM THE BUSINESS HAS BEEN SOLD IS, UNTIL THE BOARD OTHERWISE DECLARES, BOUND BY THE COLLECTIVE AGREEMENT AS IF HE HAD BEEN A PARTY THERETO AND, WHERE AN EMPLOYER SELLS HIS BUSINESS WHILE AN APPLICATION FOR CERTIFICATION OR TERMINATION OF BARGAINING RIGHTS TO WHICH HE IS



A PARTY IS BEFORE THE BOARD, THE PERSON TO WHOM THE BUSINESS HAS BEEN SOLD IS, UNTIL THE BOARD OTHERWISE DECLARES, THE EMPLOYER FOR THE PURPOSES OF THE APPLICATION AS IF HE WERE NAMED AS THE EMPLOYER IN THE APPLICATION.

(3) WHERE AN EMPLOYER ON BEHALF OF WHOSE EMPLOYEES A TRADE UNION OR COUNCIL OF TRADE UNIONS, AS THE CASE MAY BE, HAS BEEN CERTIFIED AS BARGAINING AGENT OR HAS GIVEN OR IS ENTITLED TO GIVE NOTICE UNDER SECTION 13, SELLS HIS BUSINESS, THE TRADE UNION OR COUNCIL OF TRADE UNIONS CONTINUES, UNTIL THE BOARD OTHERWISE DECLARES, TO BE THE BARGAINING AGENT FOR THE EMPLOYEES OF THE PERSON TO WHOM THE BUSINESS WAS SOLD IN THE LIKE BARGAINING UNIT IN THAT BUSINESS, AND THE TRADE UNION OR COUNCIL OF TRADE UNIONS IS ENTITLED TO GIVE TO THE PERSON TO WHOM THE BUSINESS WAS SOLD A WRITTEN NOTICE OF ITS DESIRE TO BARGAIN WITH A VIEW TO MAKING A COLLECTIVE AGREEMENT AND SUCH NOTICE HAS THE SAME EFFECT AS A NOTICE UNDER SECTION 13.

THE RESPONDENT SUBMITS THAT SECTION 55(2) IS CONDITIONED ON AN EMPLOYER BEING "BOUND...OR...A PARTY TO A COLLECTIVE AGREEMENT". THE RESPONDENT FURTHER SUBMITS THAT SECTION 55(3) IS INTENDED TO DEAL WITH SITUATIONS WHERE THERE HAS BEEN CERTIFICATION AND NOTICE HAS BEEN GIVEN PURSUANT TO SECTION 13 OF THE ACT, AND BECAUSE THERE IS NO REFERENCE TO SECTION 45 OF THE ACT IN SECTION 55(3) THAT THE SECTION DOES NOT APPLY TO SITUATIONS WHERE THERE IS TO BE A RENEWAL OF THE COLLECTIVE AGREEMENT. IT ASKS US TO CONCLUDE THAT NEITHER SECTION APPLIES TO THE FACTS OF THE INSTANT CASE.

8. COUNSEL FOR THE APPLICANTS SUBMITS THAT PURSUANT TO THE PROVISIONS OF THE COLLECTIVE AGREEMENT IN THE INSTANT CASE BUSY B WAS, IN FACT, BOUND BY THE COLLECTIVE AGREEMENT AT THE TIME OF THE SALE AND ACCORDINGLY SECTION 55(2) APPLIES. IN ADDITION, COUNSEL FOR THE TRADE UNION SUBMITS THAT BASED ON THE PLAIN MEANING OF SECTION 55(3) THAT BARGAINING RIGHTS WOULD FLOW BECAUSE THE APPLICANTS HAD BEEN "CERTIFIED AS A BARGAINING AGENT" WITHIN THE MEANING OF THE SECTION.

9. IT IS PERHAPS NECESSARY TO DISCUSS THE SCHEME OF THE ACT AND THE COMMON PRACTISE OF EMPLOYERS AND TRADE UNIONS WHICH HAS ARISEN BECAUSE OF THAT SCHEME. THE ACT IS INTENDED TO BRING ABOUT INDUSTRIAL PEACE BETWEEN TRADE UNIONS AND EMPLOYERS AND TO THAT END HAS REQUIRED THAT THERE BE A MINIMUM TERM OF A COLLECTIVE AGREEMENT WHICH IS ONE YEAR FROM THE DATE IT HAS COMMENCED TO OPERATE (SECTION 44(1)). CERTAIN

PROBLEMS HAVE ARISEN WITH RESPECT TO THE INTERIM OR HIATUS BETWEEN COLLECTIVE AGREEMENTS AND THIS MAY BE DUE TO OTHER POLICIES OF THE ACT. THE SCHEME OF LEGISLATION IN ONTARIO WHICH IS SIMILAR TO OTHER CANADIAN JURISDICTIONS, REQUIRES THAT BEFORE THERE CAN BE A LAWFUL STRIKE OR LOCK-OUT, PARTIES MUST OBTAIN CONCILIATION SERVICES. THIS OFTEN RESULTS IN A PERIOD WHEN THE AGREEMENT HAS RUN OUT BUT CONCILIATION HAS NOT CONCLUDED IN ORDER TO MAINTAIN STABILITY IN THAT PERIOD, THE LEGISLATIVE SCHEME ATTEMPTS TO MAINTAIN THE STATUS QUO OR THE RHYTHM OF THE RELATIONSHIP BY PREVENTING THE PARTIES FROM ALTERING TERMS OR CONDITIONS OF EMPLOYMENT OR RIGHTS, PRIVILEGES AND DUTIES (SECTION 70). THUS ECONOMIC WARFARE IS PROHIBITED UNTIL CONCILIATION HAS CONCLUDED AND THE SUBSEQUENT STATUTORY PERIOD UNDER SECTION 63 HAS ELAPSED NOTWITHSTANDING THAT THERE IS NO COLLECTIVE AGREEMENT.

10. THE ACT ALSO BY ITS VERY NATURE PRACTICALLY LIMITS THE MANNER OF BARGAINING PRIOR TO CONCILIATION BY PREVENTING ECONOMIC MANOEUVRES SHORT OF A STRIKE AND A LOCKOUT, SO THAT DURING BARGAINING THE EMPLOYER IS ABLE TO CONTINUE HIS OPERATIONS AND THE EMPLOYEES TO CONTINUE UNDER THE TERMS AND CONDITIONS OF EMPLOYMENT WHICH HAD EXISTED DURING THE CURRENCY OF THE COLLECTIVE AGREEMENT. FOR EXAMPLE, PRIOR TO CONCILIATION AN EMPLOYER CANNOT AS A BARGAINING TACTIC REDUCE WAGES OR CUT OFF PREMIUMS PAID ON BEHALF OF EMPLOYEES, NOR CAN A TRADE UNION BARGAIN BY EXERTING ECONOMIC PRESSURE ON THE EMPLOYER BY HAVING EMPLOYEES ENGAGE IN WORK PRACTISES WHICH WERE PROHIBITED DURING THE CURRENCY OF THE COLLECTIVE AGREEMENT. BY THUS LIMITING THE RANGE OF TACTICS PRIOR TO CONCILIATION THE ACT ALSO PREVENTS A RANCOUR WHICH MIGHT ARISE FROM SUCH TACTICS AND PROMOTES AN ATMOSPHERE WHICH IS MORE AMENABLE TO SETTLEMENT.

11. SECTION 70 OF THE ACT WHICH PREVENTS ALTERATIONS OF THE CONDITIONS OF EMPLOYMENT AND ALTERATIONS OF THE RIGHTS, PRIVILEGES AND DUTIES IS CONFIRMED BY SECTION 44(2) OF THE ACT, WHICH ALSO RECOGNIZES THAT PARTIES MAY CONSENT TO THE CONTINUED OPERATION OF A COLLECTIVE AGREEMENT OR FOR ANY OF ITS PROVISIONS WHILE THEY ARE BARGAINING. SECTION 44(2) DOES A NUMBER OF THINGS. FIRST, IT RECOGNIZES THAT THE PARTIES MAY DESIRE TO MAINTAIN THE STATUS QUO AS IT EXISTED DURING THE COLLECTIVE AGREEMENT FOR THE PERIOD OF NEGOTIATION. THIS DOES NOT DETRACT FROM SECTION 44(1) WHICH REQUIRES THAT THERE BE AN ORIGINAL PERIOD OF ONE YEAR FOR A COLLECTIVE AGREEMENT. THAT POLICY OF THE ACT HAVING BEEN ACHIEVED THERE IS NO POLICY REASON FOR NOT BEING ABLE TO CONTINUE A COLLECTIVE AGREEMENT AFTER THE INITIAL YEAR FOR LIMITED PERIODS OF TIME WHICH MAY BE LESS THAN A YEAR

12. SECOND, IT IS RECOGNIZED THAT THERE MAY BE RIGHTS OF EMPLOYEES AND RIGHTS OF OTHER TRADE UNIONS THAT ARISE DURING THE NEGOTIATING PERIOD. THEREFORE, WHERE A COLLECTIVE AGREEMENT IS CONTINUED BEYOND THE ONE YEAR PERIOD SECTION 44 CREATES WHAT HAS BEEN COMMONLY KNOWN IN LABOUR RELATIONS AS AN OPEN PERIOD WHICH PERMITS EMPLOYEES TO BRING TERMINATION APPLICATIONS OR OTHER TRADE UNIONS TO BRING CERTIFICATION APPLICATIONS. SECTION 44(2) THUS IS IN HARMONY WITH OTHER PROVISIONS OF THE ACT WHICH CREATE AN OPEN SEASON; SEE SECTION 5.

13. WE NOW TURN TO THE FACTS OF THE INSTANT CASE. ARTICLE 37 IN ONE OF THE AGREEMENTS PROVIDES AS FOLLOWS: (FOR OUR PURPOSE THERE IS NO MATERIAL DIFFERENCE BETWEEN ARTICLE 37 AND ARTICLE 24 OF THE SECOND COLLECTIVE AGREEMENT);

ARTICLE 37  
TERM OF AGREEMENT

THIS AGREEMENT SHALL COME INTO FORCE AND EFFECT ON THE 21ST SEPTEMBER, 1970, AND SHALL CONTINUE TO THE 1ST JULY, 1972, AND SHALL THEREAFTER BE AUTOMATICALLY RENEWED FOR THE PERIOD OF ONE YEAR UNLESS EITHER PARTY ON WRITTEN NOTICE TO THE OTHER, PRIOR TO THE 1ST DAY OF MAY IN ANY YEAR, SERVES NOTICE OF INTENT TO TERMINATE OR MODIFY THE AGREEMENT.

IN THE EVENT EITHER PARTY SERVES NOTICE OF A DESIRE TO NEGOTIATE CHANGES INTO THIS AGREEMENT AS ABOVE SET OUT IT IS AGREED THAT THE EMPLOYER AND THE UNION WITHOUT DUE DELAY, SHALL BEGIN NEGOTIATIONS ON THE PROPOSED CHANGES. PENDING THE RESULTS OF NEGOTIATIONS, NEITHER PARTY SHALL CHANGE THE CONDITIONS EXISTING UNDER THE AGREEMENT.

THE EFFECT OF ARTICLE 37 IS TO RENEW THE AGREEMENT FOR A PERIOD OF ONE YEAR UNLESS NOTICE IS SERVED. WE ARE NOT CONCERNED WITH THAT PROVISION. HOWEVER, THE ARTICLE DOES GO ON TO PROVIDE THAT THE PARTIES SHALL NEGOTIATE WHEN NOTICE IS GIVEN AND IN ACCORDANCE WITH THE STATUTORY SCHEME THE PARTIES HAVE PROVIDED THAT "PENDING THE RESULTS OF NEGOTIATIONS NEITHER PARTY SHALL CHANGE THE CONDITIONS EXISTING UNDER THE AGREEMENT". THE PARTIES HAVE THEREFORE CREATED AN OBLIGATION TO MAINTAIN THE STATUS QUO WHICH EXTENDS BEYOND THE JULY 1, 1972 PERIOD CONTAINED IN ARTICLE 37. THERE IS NO FIXED PERIOD FOR THE CONTINUATION AND INDEED IT IS NOT NECESSARY TO FIX A PERIOD BECAUSE THE ONE YEAR STATUTORY POLICY HAS BEEN COMPLIED WITH AND THE TERM BEYOND JULY 1, 1972, MAY VERY WELL BE FOR A PERIOD OF LESS THAN A YEAR WHICH IS IN ACCORDANCE WITH SECTION 44(2) OF THE ACT. THE AGREEMENT TO MAINTAIN THE STATUS QUO DOES HOWEVER, CREATE LEGAL OBLIGATIONS. THE RESPONDENT CONCEDED THAT IF AFTER JULY 1, 1972, AND DURING NEGOTIATIONS, IF BUSY B HAD OPENED A STORE AT THE LOCATION IN QUESTION AFTER HAVING CLOSED DOWN, THEN BUSY B WOULD HAVE BEEN BOUND TO APPLY THE "CONDITIONS EXISTING UNDER THE AGREEMENT" TO THE EMPLOYEES AT THAT STORE. THAT IS SUFFICIENT INDICATION THAT THERE IS SOME LEGAL OBLIGATION WHICH FLOWED FROM THE AGREEMENT AND WHICH EXTENDED BEYOND JULY 1, 1972.

14. IT WAS ARGUED THAT BECAUSE THERE WAS NO STORE IN OPERATION BETWEEN JULY 1, 1972, AND NOVEMBER 1, 1972, THAT BUSY B WAS NOT IN FACT BOUND. WHILE THERE WAS NO STORE OPERATING THE COLLECTIVE AGREEMENT WAS



NOT OPERATIVE, BUT IF ONE WERE TO ASK WHETHER BUSY B HAD ANY OBLIGATIONS SUBSEQUENT TO JULY 1, 1972, IT WOULD HAVE TO BE ANSWERED THAT BUSY B MIGHT STILL BE REQUIRED TO APPLY THE CONDITIONS THAT EXISTED PRIOR TO JULY 1, 1972, IF A STORE WAS OPENED. ONCE THE COLLECTIVE AGREEMENT REACHED OUT BEYOND JULY 1972 SO AS TO CREATE AN OBLIGATION ON THE EMPLOYER, THEN WE ARE OF THE OPINION THAT THE EMPLOYER WAS BOUND BY THE COLLECTIVE AGREEMENT ALTHOUGH IT MAY NOT HAVE BEEN CALLED UPON TO APPLY IT AT ANY GIVEN MOMENT. ACCORDINGLY, WE FIND THAT IF THERE HAS BEEN A SALE OF BUSINESS SECTION 55(2) OF THE ACT APPLIES TO THE INSTANT SITUATION.

15. FURTHER, WE ARE OF THE OPINION THAT SECTION 55(3) OF THE ACT IS APPLICABLE TO THE INSTANT CASE BECAUSE OF THE DECISION OF THIS BOARD IN AUTOMATIC FUELS LIMITED, DEPENDABLE SERVICE [1972] OLRB MTHLY. REP. 515. IN THAT CASE AN EMPLOYER AND A UNION HAD BEEN BOUND BY A COLLECTIVE AGREEMENT AND WHEN THE AGREEMENT EXPIRED THE PARTIES AGREED TO POSTPONE BARGAINING FOR THE RENEWAL UNTIL A LATER DATE. SUBSEQUENTLY, A SALE OF BUSINESS OCCURRED WITHIN THE MEANING OF SECTION 55 OF THE ACT. THE BOARD FOUND THAT SECTION 55(2) OF THE ACT WAS NOT APPLICABLE AND ON THE FACTS OF THAT CASE IT FOUND THAT SINCE THE APPLICANT TRADE UNION WAS "CERTIFIED AS A BARGAINING AGENT" THAT IT WAS ENTITLED TO GIVE THE PURCHASER EMPLOYER WRITTEN NOTICE OF ITS DESIRE TO BARGAIN PURSUANT TO THE PROVISIONS OF SECTION 55(3) OF THE ACT. IN THIS SITUATION WE FIND THAT SECTION 55(3) IS ALSO APPLICABLE.

16. IN THE RESULT THEREFORE THE RESPONDENT'S MOTION IS DISMISSED AND THE REGISTRAR IS REQUIRED TO LIST THIS MATTER FOR CONTINUATION OF HEARING IN ORDER TO ENABLE THE BOARD TO DEAL WITH THE MERITS OF THE SITUATION.

DECISION OF BOARD MEMBER J.E.C. ROBINSON, Q.C.: MAY 3, 1973.

1. HAVING HAD AN OPPORTUNITY OF READING THE DECISION OF MY COLLEAGUES AND PERUSING THE RELEVANT JURISPRUDENCE OF THE BOARD CONCERNING THIS MATTER, I FIND, RELUCTANTLY, THAT I AM BOUND BY THE BOARD'S EARLIER DECISION IN AUTOMATIC FUELS LIMITED, DEPENDABLE SERVICE [1972] OLRB MTHLY. REP. 515, WHICH DEALS WITH THE PROVISIONS OF SECTION 55(3) OF THE LABOUR RELATIONS ACT. WHILE THE BOARD MAY NOT BE BOUND BY THE PRINCIPLES OF STARE DECISIS, IT HAS OFTEN SAID THAT PARTIES WILL EXPECT THAT THE BOARD WILL ACT IN A MANNER CONSISTENT WITH ITS PREVIOUS DECISIONS.

2. IF I HAD BEEN A MEMBER OF THE EARLIER PANEL DECIDING THE AUTOMATIC FUELS LIMITED, DEPENDABLE SERVICE CASE, SUPRA, I MIGHT HAVE FOUND THAT SECTION 55(3) OF THE LABOUR RELATIONS ACT WAS APPLICABLE ONLY TO SITUATIONS INVOLVING THE RIGHTS OF A "NEW" UNION BECAUSE OF THE REFERENCE TO SECTION 13 AND THE OMISSION OF ANY REFERENCE TO SECTION 45 OF THE LABOUR RELATIONS ACT. I MIGHT NOT HAVE FOUND THAT SECTION 55(3) APPLIED TO SITUATIONS WHERE THERE WAS TO BE A RENEWAL OF THE COLLECTIVE AGREEMENT.

3. HOWEVER, IN VIEW OF THE BOARD'S EARLIER DECISION TO "BRIDGE THE GAP" PRESENT IN THE PROVISIONS OF SECTION 55(3) OF THE ACT, I FEEL OBLIGED

TO AGREE WITH MY COLLEAGUES THAT THIS MATTER BE LISTED FOR CONTINUATION OF HEARING IN ORDER FOR THE BOARD TO MAKE ITS FINAL DISPOSITION BASED ON THE MERITS OF THE SITUATION.

4. HAVING AGREED WITH MY COLLEAGUES THAT THIS MATTER BE LISTED FOR CONTINUATION OF HEARING, IT IS UNNECESSARY FOR ME TO DEAL WITH THE PROVISIONS OF SECTION 55(2) OF THE LABOUR RELATIONS ACT AT THIS TIME.

1742-71-R: THE OIL CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION (APPLICANT) V. THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO (RESPONDENT) V. CANADIAN UNION OF PUBLIC EMPLOYEES - C.L.C. ONTARIO HYDRO EMPLOYEES' UNION LOCAL 1000 (INTERVENER #1) V. THE CANADIAN UNION OF OPERATING ENGINEERS (INTERVENER #2).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS H. ADE AND E. BOYER.

APPEARANCES AT THE HEARINGS: IAN SCOTT AND S. T. GOUDGE FOR THE APPLICANT; F. G. HAMILTON, S. G. HORTON AND R. J. BELTON FOR THE RESPONDENT; T. E. ARMSTRONG, R. RICHARDSON AND W. C. DELLOW FOR INTERVENER #1; NO ONE FOR INTERVENER #2.

DECISION OF THE BOARD: MAY 4, 1973.

1. THE APPLICANT IS APPLYING FOR CERTIFICATION AS BARGAINING AGENT FOR ALL EMPLOYEES OF THE RESPONDENT AT THE BRUCE HEAVY WATER PLANT IN THE COUNTY OF BRUCE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND CLERICAL STAFF. THE SAID EMPLOYEES ARE PRESENTLY REPRESENTED BY INTERVENER #1 (HEREINAFTER REFERRED TO AS CUPE LOCAL 1000) UNDER A PROVINCE-WIDE COLLECTIVE AGREEMENT BETWEEN CUPE LOCAL 1000 AND HYDRO.

2. BRIEFLY THE POSITION OF HYDRO IS THAT THE UNIT APPLIED FOR BY THE APPLICANT IS INAPPROPRIATE FOR COLLECTIVE BARGAINING AND THAT THE APPROPRIATE UNIT IS THE EXISTING PROVINCE-WIDE UNIT REPRESENTED BY CUPE LOCAL 1000. CUPE LOCAL 1000 AGREES WITH THE POSITION OF HYDRO AS TO THE INAPPROPRIATENESS OF THE UNIT PROPOSED BY THE APPLICANT AND THE APPROPRIATENESS OF THE PROVINCE-WIDE UNIT. IN THE ALTERNATIVE, CUPE LOCAL 1000 SUBMITS THAT IF A SMALLER UNIT THAN A PROVINCE-WIDE UNIT IS APPROPRIATE, WHICH IT DOES NOT ADMIT, THE UNIT WOULD BE THE ENTIRE BRUCE NUCLEAR GENERATING COMPLEX AT DOUGLAS POINT ON LAKE HURON. SUCH A UNIT WOULD ENCOMPASS NOT ONLY THE HEAVY PLANT, BUT ALSO THE ADJACENT DOUGLAS POINT GENERATING STATION, THE AUXILIARY STEAM PLANT AND EVENTUALLY THE BRUCE GENERATING STATION WHICH IS CURRENTLY UNDER CONSTRUCTION AT THE SAME SITE. INTERVENER #2 (HEREINAFTER REFERRED TO AS C.U.O.E.) CONCURS IN THE POSITION OF THE APPLICANT AND HAS ITSELF APPLIED FOR CERTIFICATION FOR A UNIT OF STATIONARY ENGINEERS EMPLOYED IN THE AUXILIARY STEAM PLANT. THAT APPLICATION IS STILL PENDING BEFORE THE BOARD.

3. THE CLASSIFICATIONS OF EMPLOYEES WHOM THE APPLICANT SUBMITS SHOULD BE ENCOMPASSED IN THE BARGAINING UNIT FOR WHICH IT IS APPLYING IN THE BRUCE HEAVY WATER PLANT ARE SENIOR CHEMICAL OPERATORS, CHEMICAL OPERATORS, ASSISTANT CHEMICAL OPERATORS, CHEMICAL OPERATORS IN TRAINING, SENIOR SHIFT CONTROL TECHNICIANS, SHIFT CONTROL TECHNICIANS, ASSISTANT SHIFT CONTROL TECHNICIANS, MECHANICAL MAINTAINER SUB-FOREMAN, MECHANICAL MAINTAINER JOURNEYMAN, MECHANICAL MAINTAINER IMPROVERS, SHIFT CHEMICAL TECHNICIANS, SHIFT ASSISTANT CHEMICAL TECHNICIANS, AND SHIFT ASSISTANT CHEMICAL TECHNICIANS TRAINEES. THE APPLICANT LEFT IT TO THE DISCRETION OF THE BOARD WHETHER PERSONS IN THE CLASSIFICATIONS OF STOCK-KEEPER FOREMAN, STOCK-KEEPERS, TECHNICIAN INSPECTORS, HANDYMEN, CLASS 1 DRIVERS, BUILDING MECHANIC SUB-FOREMAN, BUILDING MECHANICS AND SERVICE MAINTAINERS SHOULD BE INCLUDED IN THE BARGAINING UNIT.

4. IN ORDER FOR THE BOARD TO APPRECIATE AND ASSESS THE MERITS OF THE POSITIONS OF THE PARTIES TO THIS APPLICATION WITH RESPECT TO THE APPROPRIATE BARGAINING UNIT, IT IS NECESSARY TO HAVE SOME UNDERSTANDING OF HYDRO'S OPERATIONS THROUGHOUT ONTARIO, AT THE BRUCE NUCLEAR POWER DEVELOPMENT COMPLEX AT DOUGLAS POINT AND WITHIN THE BRUCE HEAVY WATER PLANT. IT IS ALSO NECESSARY TO UNDERSTAND THE INTERRELATIONSHIPS THAT EXIST BETWEEN HYDRO'S PROVINCE-WIDE SYSTEM, THE COMPLEX AND THE HEAVY WATER PLANT IN TERMS OF STRUCTURE, ORGANIZATION, POLICIES, CONTROL AND PERSONNEL. EXTENSIVE EVIDENCE RELATING TO ALL OF THE FOREGOING IS CONTAINED IN THE REPORT OF THE EXAMINER, J.A. MACDONALD, DATED SEPTEMBER 19, 1972 AND HIS SUPPLEMENTARY REPORT DATED OCTOBER 25, 1972. IN ADDITION SOME TWENTY-FIVE EXHIBITS WERE FILED WITH AND FORMED PART OF THE REPORTS. AS WELL, THE BOARD ENTERTAINED OVER A PERIOD OF THREE DAYS (JANUARY 3, 25 AND FEBRUARY 15, 1973) EXTENSIVE SUBMISSIONS MADE BY COUNSEL FOR THE APPLICANT, COUNSEL FOR HYDRO, AND COUNSEL FOR CUPE LOCAL 1000 AS TO THE CONCLUSIONS THAT THE BOARD SHOULD REACH BASED ON THE EVIDENCE CONTAINED IN THE EXAMINER'S REPORTS. WE WOULD MENTION HERE THAT THE WELL ORGANIZED AND PREPARED REPORTS OF THE EXAMINER, WHICH CONTAIN IN TOTAL OVER 165 PAGES OF EVIDENCE, EXCLUSIVE OF EXHIBITS, AND THE ABLE PRESENTATION OF THE SUBMISSIONS OF COUNSEL WERE OF GREAT ASSISTANCE TO THE BOARD IN ARRIVING AT ITS DECISION IN THIS MATTER.

5. IN ORDER TO PLACE THE PRESENT OPERATIONS OF HYDRO AND THE EXISTING PATTERN OF COLLECTIVE BARGAINING IN PERSPECTIVE, ONE MUST KNOW THE BACKGROUND OF HYDRO'S GROWTH OVER THE PAST THREE DECADES AND THE MANNER IN WHICH ITS COLLECTIVE BARGAINING RELATIONSHIP HAS DEVELOPED OVER THIS PERIOD. FOR THAT REASON, THE PAST HISTORY AS WELL AS THE CURRENT SITUATION ARE DEALT WITH IN THIS DECISION. WE WOULD MENTION THAT THERE ARE CONFLICTS AND DISCREPANCIES IN THE EVIDENCE OF WITNESSES CALLED BY THE VARIOUS PARTIES TO THESE PROCEEDINGS PARTICULARLY RELATING TO THE OPERATIONS OF THE BRUCE HEAVY WATER PLANT AND THE COMPLEX. THE STATEMENTS MADE IN THIS DECISION RELATING THERETO REFLECT THE CONCLUSIONS, IN FACT, WHICH WE HAVE REACHED BASED ON ALL THE EVIDENCE.

6. HYDRO, UNDER THE POWER COMMISSION ACT OF 1906, WAS GRANTED AUTHORITY AND RESPONSIBILITY FOR PROVIDING ELECTRICAL POWER ON A WHOLE-



SALE AND RETAIL BASIS THROUGHOUT THE PROVINCE. INITIALLY HYDRO RELIED ON HYDRAULIC GENERATION, THAT IS, WATER DRIVEN MACHINERY, TO GENERATE ELECTRICITY AND CONTINUED TO DO SO UNTIL THE LATE 1940'S. IN THE LATE 1940'S, HOWEVER, HYDRO BEGAN TO BUILD AND USED FOSSIL FIRED PLANTS. AS A RESULT OF THE HEAVY INCREASE IN THE DEMAND FOR ELECTRICAL POWER, HYDRO IN THE MID 1950'S EXPANDED ITS PROGRAM OF UTILIZING FOSSIL FIRED GENERATING STATIONS. TO-DAY THE FOSSIL FIRED GENERATING STATIONS CONSIST OF THE HEARN GENERATING STATION AT TORONTO, THE KEITH GENERATING STATION AT WINDSOR (WHICH WERE THE ORIGINAL FOSSIL FIRED GENERATING STATIONS), THE LAKEVIEW GENERATING STATION AT MISSISSAUGA, THE THUNDER BAY GENERATING STATION, THE LAMBTON GENERATING STATION AT SARNIA, AND THE NANTICOKE GENERATING STATION NEAR SIMCOE. A NEW LENNOX GENERATING STATION IS CURRENTLY UNDER CONSTRUCTION NEAR KINGSTON.

7. AT THIS TIME AS WELL, GAS TURBINE GENERATING UNITS WERE ESTABLISHED AT STRATEGIC LOCATIONS THOUGHOUT THE PROVINCE. IN THE RESULT, IN THE 1950'S HYDRO'S GENERATING FACILITIES WERE APPROXIMATELY HALF AND HALF DEPENDENT ON FOSSIL FUELS AND WATER POWER. DURING ALL OF THE ABOVE REFERRED TO PERIOD, A TRANSMISSION AND DISTRIBUTION NETWORK WAS DEVELOPED INTO A FULLY INTEGRATED POWER GRID EXTENDING BOTH EAST AND WEST WITHIN CANADA AND SOUTH INTO THE UNITED STATES PROVIDING A VAST ELECTRICAL POWER POOL THROUGHOUT MORE THAN HALF THE CONTINENT.

8. IN THE 1960'S THE COMMISSION IN CONJUNCTION WITH ATOMIC ENERGY OF CANADA LIMITED ENTERED INTO A PROGRAM TO PRODUCE ELECTRICAL POWER USING NUCLEAR ENERGY AS A HEATING DEVICE. THIS PROGRAM NOW CONSISTS OF A NUCLEAR POWER PLANT NEAR ROLPHTON, WHICH IS A DEMONSTRATOR PLANT. A TRAINING CENTRE IS ALSO LOCATED AT ROLPHTON. ALL EMPLOYEES WHO MIGHT BE SUBJECT TO RADIATION HAZARDS IN NUCLEAR OPERATIONS GO THROUGH THE TRAINING CENTRE BEFORE BEING DEPLOYED TO ANY OF THE NUCLEAR GENERATING STATIONS. THERE IS THE NUCLEAR GENERATING STATION AT DOUGLAS POINT. THIS STATION, WHICH IS THE FIRST COMMERCIALY VIABLE NUCLEAR GENERATING STATION, IS ONE COMPONENT OF THE BRUCE NUCLEAR POWER DEVELOPMENT COMPLEX LOCATED NEAR KINCARDINE ON LAKE HURON. THERE IS ALSO A NUCLEAR GENERATING STATION AT PICKERING JUST EAST OF TORONTO. AS WELL, A SECOND MAJOR POWER COMPONENT IN THE BRUCE NUCLEAR POWER DEVELOPMENT COMPLEX, THE BRUCE NUCLEAR GENERATING STATION, IS CURRENTLY UNDER CONSTRUCTION.

9. HYDRO HAS DIVIDED ITS OPERATIONS INTO SEVEN REGIONS. MORE PARTICULARLY, THERE ARE THE NIAGARA AND WESTERN REGIONS WITH THEIR HEAD OFFICES AT HAMILTON, THE GEORGIAN BAY REGION WITH ITS HEAD OFFICE AT BARRIE, THE EASTERN REGION WITH IT HEAD OFFICE AT BELLEVILLE, THE NORTH EASTERN REGION AND THE NORTH WESTERN REGION WITH THEIR HEAD OFFICES AT THUNDER BAY, AND THE CENTRAL REGION WITH ITS HEAD OFFICE AT TORONTO. THE NUMBER OF EMPLOYEES IN EACH REGION VARIES FROM SOME 400 IN THE GEORGIAN BAY REGION TO 1,500 IN THE EASTERN REGION FOR A TOTAL OF ABOUT 7,000 EMPLOYEES IN THE SEVEN REGIONS. AN ADDITIONAL 5,000 PERSONS ARE EMPLOYED AT THE HEAD OFFICE COMPLEX IN TORONTO AND VICINITY FOR AN APPROXIMATE TOTAL OF 12,000 EMPLOYEES.

10. EACH REGION IS DIVIDED INTO AREAS AND THERE ARE SIXTY-FIVE AREAS ACROSS THE PROVINCE IN WHICH THERE ARE A TOTAL OF SIXTY-EIGHT HYDRAULIC GENERATING STATIONS, SIX FOSSIL FIRED THERMAL GENERATING STATIONS, THREE NUCLEAR FIRED THERMAL GENERATING STATIONS, SOME TWELVE GAS TURBINE THERMAL GENERATING UNITS, ONE HUNDRED AND EIGHTY TRANSFORMER STATIONS AND SEVEN HUNDRED AND TWENTY DISTRIBUTING STATIONS. THE OPERATIONS HEAD OFFICE DIVISION EXERCISES FUNCTIONAL CONTROL OVER ALL OF THE ABOVE FACILITIES, ALTHOUGH ADMINISTRATIVE CONTROL TO SOME DEGREE IS DECENTRALIZED.

11. THE ASSISTANT CHIEF ENGINEER, OPERATIONS, HAS OVERALL RESPONSIBILITY FOR THE OPERATIONAL PRODUCTION FACILITIES OF HYDRAULIC AND THERMAL POWER GENERATION. THOSE PERSONS IN CHARGE OF HYDRAULIC PLANTS REPORT DIRECTLY TO THE ASSISTANT CHIEF ENGINEER. THERE IS AN OPERATIONS DIVISION FOR THERMAL BASED PLANTS WHICH IN TURN HAS TWO SUB-DIVISIONS, ONE COVERING FOSSIL FUEL THERMAL PRODUCTION AND THE OTHER COVERING NUCLEAR FUEL THERMAL PRODUCTION OPERATIONS, WITH A MANAGER IN CHARGE OF EACH SUB-DIVISION. THESE TWO MANAGERS REPORT TO A DIRECTOR OF THERMAL OPERATIONS, WHO IN TURN REPORTS TO THE ASSISTANT CHIEF ENGINEER, OPERATIONS.

12. TURNING NOW TO THE DEVELOPMENT OF HYDRO'S COLLECTIVE BARGAINING RELATIONSHIP, IN THE 1930'S HYDRO ACCORDED VOLUNTARY RECOGNITION TO AN EMPLOYEES' ASSOCIATION WHICH REPRESENTED ALL OF HYDRO'S EMPLOYEES. CUPE LOCAL 1000 SUBSEQUENTLY IN THE 1950'S SUPERSEDED AND ACQUIRED THE BARGAINING RIGHTS OF THE EMPLOYEES' ASSOCIATION AND SINCE THAT TIME CUPE LOCAL 1000 AND HYDRO HAVE BEEN PARTIES TO A SERIES OF COLLECTIVE AGREEMENTS. IN THE EARLY 1950'S, HOWEVER, THE INTERNATIONAL UNION OF OPERATING ENGINEERS (HEREINAFTER REFERRED TO AS I.U.O.E.) MADE SUCCESSFUL APPLICATIONS FOR CERTIFICATION TO THIS BOARD FOR EMPLOYEES AT THE HEAD OFFICE HEATING AND AIR CONDITIONING PLANT, THE HEARN GENERATING STATION AT TORONTO AND THE KEITH GENERATING STATION AT WINDSOR. THE C.U.O.E. WAS SUCCESSFUL IN DISPLACING THE I.U.O.E. AT THESE FACILITIES IN 1959. CUPE LOCAL 1000, HOWEVER, ACQUIRED AND HAS HELD THE BARGAINING RIGHTS FOR ALL OF THE EMPLOYEES OF HYDRO EMPLOYED IN ITS OTHER NEW FACILITIES BUILT DURING THE 1950'S AND 1960'S AND INTO THE 1970'S INCLUDING THE BRUCE HEAVY WATER PLANT, BY REASON OF THE PROVINCE-WIDE SCOPE OF THE RECOGNITION CLAUSE OF ITS COLLECTIVE AGREEMENTS WITH HYDRO. WE WOULD MENTION HERE THAT IN 1968 THE C.U.O.E. MADE AN UNSUCCESSFUL APPLICATION TO THE BOARD FOR CERTIFICATION AS BARGAINING AGENT FOR THE EMPLOYEES OF HYDRO AT THE LAKEVIEW GENERATING STATION AT MISSISSAUGA. AT PRESENT, NEARLY 12,000 EMPLOYEES ARE COVERED BY THE CURRENT COLLECTIVE AGREEMENT BETWEEN HYDRO AND CUPE LOCAL 1000 AND SOME 450 EMPLOYEES ARE COVERED BY COLLECTIVE AGREEMENTS BETWEEN HYDRO AND THE C.U.O.E.

13. WE WOULD DEAL NOW WITH THE BRUCE NUCLEAR POWER DEVELOPMENT COMPLEX NEAR KINCARDINE. IT HAS THREE PRINCIPAL FACILITIES: (1) THE DOUGLAS POINT GENERATING STATION WHICH HAS BEEN IN OPERATION SINCE 1968, (2) THE BRUCE HEAVY WATER PLANT, THE SUBJECT OF THIS APPLICATION, WHICH IS IN THE FINAL STAGES OF COMMISSIONING, AND (3) THE BRUCE GENERATING STATION WHICH IS CURRENTLY UNDER CONSTRUCTION. EACH OF THESE FACILITIES IS OR WILL BE OPERATED BY A STAFF UNDER THE DIRECTION OF THE STATION OR

PLANT MANAGER. THERE IS ALSO THE BRUCE NUCLEAR POWER DEVELOPMENT SERVICE DEPARTMENT (HEREINAFTER REFERRED TO AS B.N.P.D. SERVICE DEPARTMENT) WHICH IS OPERATED BY A STAFF UNDER THE DIRECTION OF A DEPARTMENT MANAGER. THE EMPLOYEES OF THE B.N.P.D. SERVICE DEPARTMENT PROVIDE SERVICES TO THE PRODUCTION FACILITIES OF THE COMPLEX.

14. PHYSICALLY, THE DOUGLAS POINT GENERATING STATION IS COMPOSED OF A COMPLEX OF BUILDINGS AT THE SOUTH END OF THE BRUCE NUCLEAR POWER DEVELOPMENT COMPLEX. THE STATION INCLUDES ADMINISTRATIVE OFFICES AND SERVICE FACILITIES. THE HEAVY WATER PLANT, WHICH IS ALSO LOCATED TOWARDS THE SOUTHERN PART OF THE PROPERTY CLOSE BY THE GENERATING STATION, INCLUDES PROCESS UNITS AND AUXILIARY UTILITY AND ADMINISTRATIVE FACILITIES. ADJACENT TO THE BRUCE HEAVY WATER PLANT IS THE AUXILIARY STEAM PLANT AND ITS FUEL AND OIL SUPPLY SYSTEM. THE BRUCE GENERATING STATION UNDER CONSTRUCTION IS ON THE NORTHERN PART OF THE PROPERTY. THE REMAINDER OF THE SITE IS THE RESPONSIBILITY OF THE B.N.P.D. SERVICE DEPARTMENT.

15. THE STATION MANAGERS OF THE DOUGLAS POINT GENERATING STATION, THE BRUCE GENERATING STATION, THE PLANT MANAGER OF THE BRUCE HEAVY WATER PLANT AND THE MANAGER OF THE B.N.P.D. SERVICE DEPARTMENT ARE RESPONSIBLE FOR THEIR RESPECTIVE FACILITIES AND EACH REPORTS TO THE OPERATIONS MANAGER FOR THE BRUCE NUCLEAR POWER DEVELOPMENT COMPLEX. IN EACH OF THE FACILITIES THERE IS A BUSINESS ADMINISTRATOR WHO IS RESPONSIBLE FOR ACCOUNTING AND CLERICAL SERVICES, COST CONTROL ANALYSIS, CONTRACT ADMINISTRATION, PERSONNEL FUNCTIONS AND PROCUREMENT OF SUPPLIES. THESE ADMINISTRATORS REPORT AND ARE RESPONSIBLE TO THE MANAGER IN THEIR FACILITY.

16. HYDRO OPERATES THROUGH A CENTRAL PAY CONTROL ON A PROVINCE-WIDE BASIS, WITH INPUT FROM MORE LOCALIZED PAY CENTRES BEING PROCESSED IN HEAD OFFICE AND PAY CHEQUES ARE DISTRIBUTED FROM THAT CENTRE. AT THE COMPLEX, WITH REGARD TO ACCOUNTING PROCEDURES, THE B.N.P.D. SERVICE DEPARTMENT HAS THE RESPONSIBILITY FOR DEFINING COST SHARING FORMULAS AND DISTRIBUTING SHARED COSTS AND CO-ORDINATING OPERATING, MAINTENANCE AND CAPITAL IMPROVEMENT BUDGETS AND COST FORECASTS. MANAGEMENT OF EACH FACILITY IS RESPONSIBLE FOR THE PREPARATION OF THE BUDGET FOR ITS FACILITY. EACH MANAGER IS RESPONSIBLE FOR HIS OWN BUDGET, BUT THE B.N.P.D. SERVICE DEPARTMENT IS RESPONSIBLE FOR CO-ORDINATING THEM INTO A TOTAL BUDGET. THE BUDGET THEN GOES TO THE OPERATING MANAGER OF THE BRUCE NUCLEAR POWER DEVELOPMENT FOR APPROVAL AND THEN TO THE NUCLEAR OPERATIONS MANAGER FOR THE SAME PURPOSE. THEN THE BUDGET OF THE COMPLEX IS INTEGRATED WITH THE BUDGETS OF ALL OTHER HYDRO OPERATIONS.

17. THE BRUCE HEAVY WATER PLANT IS ORGANIZED INTO FIVE SECTIONS, NAMELY, TECHNICAL, PLANNING, PRODUCTION, BUSINESS ADMINISTRATION AND TRAINING. IT IS WITH THE PRODUCTION SECTION THAT ONE FINDS THE CHEMICAL OPERATORS, CONTROL TECHNICIANS, AND MECHANICAL MAINTAINERS WHICH ARE THE PRINCIPAL CLASSIFICATIONS OF EMPLOYEES FOR WHICH THE APPLICANT IS SEEKING CERTIFICATION. PARALLEL CLASSIFICATIONS AND FUNCTIONS, HOWEVER, EXIST AT THE ADJACENT DOUGLAS POINT GENERATING STATION WITH THE EXCEPTION OF CHEMICAL OPERATORS. BY WAY OF CLARIFICATION, SHIFT CONTROL TECHNICIANS



AND MECHANICAL MAINTAINERS HAVE IDENTICAL QUALIFICATION REQUIREMENTS IN THE HEAVY WATER PLANT, THE DOUGLAS POINT GENERATING STATION AND OTHER NUCLEAR FACILITIES. THEIR SPECIFIC TRAINING, HOWEVER, IS ORIENTED TO THE PARTICULAR FACILITY TO WHICH THEY ARE ASSIGNED. THEIR BASIC SKILLS, HOWEVER, ARE APPLICABLE TO HYDRO'S VARIOUS NUCLEAR FACILITIES. GERNALLY SPEAKING, THE SELECTION, HIRING AND BASIC TRAINING OF MORE SKILLED CLASSIFICATIONS, I.E., MECHANICAL MAINTAINERS AND CONTROL TECHNICIANS, ARE THE RESPONSIBILITIES OF THE NUCLEAR TRAINING CENTRE AT ROLPHTON. THIS ALSO APPLIES TO THE MORE HIGHLY SKILLED CHEMICAL OPERATORS, EXCEPT THE RECRUITING AND TRAINING FOR THIS CLASSIFICATION HAVE BEEN DONE BY THE MANAGEMENT OF THE BRUCE HEAVY WATER PLANT.

18. IT APPEARS THAT MOST OR ALL OF THE CHEMICAL OPERATORS HAVE HAD PRIOR EXPERIENCE IN CHEMICAL PLANTS IN OTHER INDUSTRIES. NONE, HOWEVER, UPON BEING HIRED WAS FULLY QUALIFIED FOR THE PURPOSES OF HYDRO'S OPERATIONS AT THE BRUCE HEAVY WATER PLANT. THAT IS TO SAY, ALL OF THE CHEMICAL OPERATORS NEEDED TRAINING TO MEET THE STANDARD REQUIRED FOR THE PLANT. THE BASIC HIRING SPECIFICATIONS AND FINAL QUALIFICATIONS STANDARDS ARE SET BY THE MANAGEMENT OF THE HEAVY WATER PLANT IN COLLABORATION WITH THE NUCLEAR TRAINING CENTRE. ALSO, CERTAIN GENERAL STANDARDS SET BY HYDRO FOR ITS SYSTEM ARE TAKEN INTO ACCOUNT IN ESTABLISHING THE STANDARD REQUIRED FOR CHEMICAL OPERATORS EMPLOYED AT THE HEAVY WATER PLANT.

19. THE BRUCE HEAVY WATER PLANT IS NOT YET PRODUCING HEAVY WATER FOR GENERAL USE BUT IS IN THE COMMISSIONING STAGES. THIS MEANS THAT THE INSTALLED EQUIPMENT IS BEING INSPECTED AND TESTED AND THE WHOLE PLANT IS GRADUALLY BEING BROUGHT INTO AN OPERATING STATE. THE PLANT, HOWEVER, HAS NOT YET REACHED THE FINAL STAGE OF OVERALL PERFORMANCE TESTING. DURING THE CURRENT COMMISSIONING STAGE, SUBSTANTIALLY MORE STAFF IS REQUIRED THAN WILL BE REQUIRED DURING NORMAL PRODUCTION OPERATION. DURING THIS COMMISSIONING PERIOD THERE HAVE BEEN SOME TRANSFERS AND AN INTERCHANGE OF PERSONNEL BETWEEN THE FACILITIES IN THE COMPLEX, I.E., THE DOUGLAS POINT GENERATING STATION, THE BRUCE HEAVY WATER PLANT AND THE B.N.P.D. SERVICE DEPARTMENT. ALSO, THERE HAVE BEEN TRANSFERS OF PERSONNEL BETWEEN THE BRUCE HEAVY WATER PLANT AND THE NUCLEAR TRAINING CENTRE AT ROLPHTON AS WELL AS SOME TRANSFERS FROM THE PICKERING GENERATING STATION TO THE HEAVY WATER PLANT. THOSE TRANSFERS AND INTERCHANGE OF PERSONNEL APPEAR TO RELATE LARGELY TO MECHANICAL MAINTAINERS AND CONTROL TECHNICIANS.

20. WE WOULD MENTION HERE THAT EMPLOYEES MAY APPLY ON THEIR WON INITIATIVE BY WAY OF APPLICATION FOR TRANSFERS TO A SPECIFIC VACANCY OR TO APPLY FOR TRANSFERS FOR OTHER REASONS. SUCH REQUESTS ARE PROCESSED BY THE MANAGEMENT OF EACH FACILITY OR DEPARTMENT AND THE APPLICATIONS ARE CONSIDERED BY THE LOCATION HAVING THE VACANCY, IN ACCORDANCE WITH EXISTING PRACTICES AND AGREEMENTS FOR FILLING VACANCIES ACROSS THE HYDRO SYSTEM. LOWER LEVELS OF VACANCIES COVERED BY COLLECTIVE AGREEMENT WITHIN A FACILITY MAY BE FILLED FROM WITHIN WITHOUT POSTING OR ADVERTISING. WITH REFERENCE TO THE CUPE LOCAL 1000 COLLECTIVE AGREEMENT WITH HYDRO THERE ARE A SUBSTANTIAL NUMBER OF TRANSFERS OF EMPLOYEES FROM ONE FACILITY TO ANOTHER ACROSS THE SYSTEM, GENERALLY MADE AS A RESULT OF INTERNAL AD-

VERTISING. IN THE CASE OF THE FACILITIES REPRESENTED BY C.U.O.E. JOB VACANCIES ARE RESTRICTED TO IN-PLANT POSTING IN ACCORDANCE WITH PLANT SENIORITY. THE RESULT HAS BEEN SOME LIMITATION ON THE TRANSFER OF EMPLOYEES TO AND FROM THE BARGAINING UNIT REPRESENTED BY THE TWO DIFFERENT TRADE UNIONS BECAUSE OF THE SENIORITY PROVISIONS OF EACH AGREEMENT.

21. THE FACT THAT ALL OF THE EMPLOYEES FOR WHOM THE APPLICANT IS SEEKING CERTIFICATION WORK WITHIN THE GEOGRAPHIC BOUNDARIES OF THE BRUCE HEAVY WATER PLANT FAVOURS THE POSITION OF THE APPLICANT. THERE IS SOME UNCERTAINTY, HOWEVER, EVEN AS FAR AS THE APPLICANT IS CONCERNED AS TO WHETHER CERTAIN CLASSIFICATIONS OF EMPLOYEES, I.E., STOCK-KEEPERS, TECHNICIAN INSPECTORS, HANDYMEN, DRIVERS AND BUILDING AND SERVICE MECHANICS SHOULD BE INCLUDED OR EXCLUDED FROM THE UNIT WHICH THE APPLICANT CLAIMS IS APPROPRIATE FOR COLLECTIVE BARGAINING. THE UNCERTAINTY CONCERNING THE LINES OF DEMARCATION OF THE BARGAINING UNIT ARISES OUT OF THE FACT THAT A NUMBER OF THESE CLASSIFICATIONS OF EMPLOYEES PERFORM COMMON SERVICES NOT ONLY FOR THE BRUCE HEAVY WATER PLANT, BUT ALSO THE DOUGLAS POINT GENERATING STATION AND INDEED THE WHOLE BRUCE NUCLEAR POWER DEVELOPMENT COMPLEX SITE. MOREOVER, MOST OF THESE CLASSIFICATIONS OF EMPLOYEES ARE BASICALLY ATTACHED TO THE B.N.P.D. SERVICE DEPARTMENT AS OPPOSED TO THE HEAVY WATER PLANT OR OTHER FACILITIES ON THE SITE. ON THE OTHER HAND, THE DUTIES AND RESPONSIBILITIES WHICH THESE EMPLOYEES PERFORM IN THE HEAVY WATER PLANT ARE LARGELY MAINTENANCE IN NATURE AS OPPOSED TO PRODUCTION. AS WELL, THE MAINTENANCE PERSONNEL OF THE B.N.P.D. SERVICE DEPARTMENT ARE MORE OR LESS ASSIGNED TO WORK AT THE HEAVY WATER PLANT ON A PERMANENT BASIS AND THIS IS LIKELY TO BE MORE THE CASE ONCE THE PLANT HAS BEEN COMMISSIONED AND IS FULLY OPERATIONAL.

22. MILITATING AGAINST THE UNIT PROPOSED BY THE APPLICANT, HOWEVER, IS THE FACT THAT THERE HAVE BEEN SOME TRANSFERS TO AND FROM THE HEAVY WATER PLANT OF EMPLOYEES AMONG CLASSIFICATIONS THAT ARE INTEGRAL TO THE PRODUCTION OPERATIONS OF THE PLANT, I.E., CONTROL TECHNICIANS AND MECHANICAL MAINTAINERS. THESE TRANSFERS HAVE LARGELY BEEN BETWEEN THE DOUGLAS POINT GENERATING STATION AND THE BRUCE HEAVY WATER PLANT BUT, AS ALREADY STATED, THERE ALSO HAVE BEEN TRANSFERS BETWEEN THE HEAVY WATER PLANT AND THE NUCLEAR TRAINING CENTRE AT ROLPHTON AND OTHER HYDRO FACILITIES OUTSIDE OF THE COMPLEX. ON THE OTHER HAND, THE TEMPORARY TRANSFERS OR INTERCHANGE OF PERSONNEL AS OPPOSED TO PERMANENT TRANSFERS HAVE BEEN RELATIVELY SMALL IN NUMBER AND HAVE TAKEN PLACE DURING THE COMMISSIONING STAGES OF THE BRUCE HEAVY WATER PLANT, WHEN AN INFLATED NUMBER OF EMPLOYEES ARE WORKING IN THE PLANT AS COMPARED WITH THE NUMBER THAT WILL BE REQUIRED WHEN THE PLANT IS FULLY OPERATIONAL.

23. THE SPECIAL NATURE OF THE OPERATION OF THE PLANT AND ITS PRODUCT, HEAVY WATER, DIFFERENTIATES IT FROM ANY OTHER OF HYDRO'S FACILITIES. NOTWITHSTANDING THAT FACT, MANY OF THE JOB CLASSIFICATIONS AND JOB FUNCTIONS PERFORMED AT THE HEAVY WATER PLANT ARE THE SAME AS THE CLASSIFICATIONS AND JOBS PERFORMED ELSEWHERE IN THE HYDRO SYSTEM AND EVEN WITHIN THE BRUCE NUCLEAR DEVELOPMENT COMPLEX INTSELF. FURTHER, WITH REGARD TO THE COMPLEX, THERE IS A NECESSITY FOR COMMUNICATION AMONG EMPLOYEES IN



THE SAME AND DIFFERENT CLASSIFICATIONS IN VARYING DEGREES WORKING IN THE DIFFERENT FACILITIES OF THE COMPLEX, I.E., THE DOUGLAS POINT GENERATING STATION, THE HEAVY WATER PLANT AND THE B.N.P.D. SERVICE DEPARTMENT BECAUSE OF INTERRELATED OPERATIONS INVOLVING THESE FACILITIES. THE CLASSIFICATION OF EMPLOYEES WHICH IS ONLY EMPLOYED AT THE HEAVY WATER PLANT IS THAT OF CHEMICAL OPERATOR. MOST OF THE EMPLOYEES IN THIS CLASSIFICATION, HOWEVER, RECEIVE SIMILAR TRAINING TO THAT RECEIVED BY NUCLEAR OPERATORS WORKING IN OTHER FACILITIES OF THE COMPLEX AND ALSO OTHER NUCLEAR FACILITIES OF HYDRO ELSEWHERE IN THE PROVINCE, ALTHOUGH THE CHEMICAL OPERATORS RECEIVE SPECIALIZED TRAINING FOR CERTAIN ASPECTS OF THEIR JOBS.

24. IN STRUCTURE AND ORGANIZATION THE HYDRO THROUGHOUT ONTARIO IS HIGHLY INTEGRATED, ALTHOUGH A FAIRLY WIDE LATITUDE IS ACCORDED TO THE MANAGEMENT OF EACH FACILITY OR INSTALLATION TO RUN ITS OWN INTERNAL ADMINISTRATION BOTH IN REGARD TO THEIR OPERATIONS AND PERSONNEL. THE EXERCISE OF THESE FUNCTIONS, HOWEVER, IS CARRIED ON AT EACH FACILITY WITHIN AN OVERALL POLICY FRAMEWORK AND STANDARDS DICTATED BY THE HEAD OFFICE OF HYDRO. WITH REGARD TO THE COMPLEX, WHILE EACH FACILITY HAS ITS OWN SEPARATE ADMINISTRATIVE SET-UP, IN MANY AREAS THERE IS A DOVE-TAILING OF BOTH THEIR ADMINISTRATIONS AND AN INTEGRATION AND COMMON USE OF A NUMBER OF SERVICES. IN OTHER WORDS, THROUGHOUT THE HYDRO SYSTEM AND MORE PARTICULARLY WITHIN THE COMPLEX THERE IS A MARKED DEGREE OF OPERATIVE FUNCTIONAL COHERENCE AND INTERDEPENDENCE AMONG THE VARIOUS FACILITIES.

25. THERE ARE BASIC COMMON WAGE CLASSIFICATIONS, WORKING CONDITIONS AND BENEFITS WHICH ARE APPLICABLE TO MOST EMPLOYEES REPRESENTED BY CUPE LOCAL 1000 IN THE NUMEROUS INSTALLATIONS OF HYDRO THROUGHOUT THE PROVINCE, INCLUDING THE BRUCE HEAVY WATER PLANT. IN FACT, WAGE RATES AND WORKING CONDITIONS FOR MOST CLASSIFICATIONS OF EMPLOYEES WORKING AT THE HEAVY WATER PLANT ARE VERY SIMILAR TO THOSE WHICH PREVAIL FOR THE SAME CLASSIFICATIONS AT THE DOUGLAS POINT NUCLEAR GENERATING STATION. MOREOVER, IN ADDITION TO THE TRANSFERS OF EMPLOYEES WITHIN AND TO AND FROM THE COMPLEX WHICH HAVE BEEN REFERRED TO, THERE ARE HUNDREDS OF TRANSFERS OF EMPLOYEES EACH YEAR THROUGH-OUT THE HYDRO SYSTEM. JOB VACANCIES, PARTICULARLY IN THE MORE SKILLED CLASSIFICATIONS, ARE GENERALLY ADVERTISED WITHIN THE SYSTEM AND THE JOBS CAN BE APPLIED FOR BY ANY OF THE EMPLOYEES COVERED BY THE COLLECTIVE AGREEMENT BETWEEN HYDRO AND CUPE LOCAL 1000. THE SENIORITY PROVISIONS OF THE COLLECTIVE AGREEMENT HAVE COMMON APPLICATION TO ALL EMPLOYEES IN THE BARGAINING UNIT. THE SIZE OF THE UNIT IN ITSELF FACILITATES EASY MOBILITY OF EMPLOYEES THROUGHOUT THE HYDRO SYSTEM BY WAY OF TRANSFERS. THE EVIDENCE INDICATES, HOWEVER, THAT DIFFICULTIES HAVE OCCURRED OVER THE TRANSFER OF EMPLOYEES TO AND FROM FACILITIES REPRESENTED BY CUPE LOCAL 1000 AND THOSE REPRESENTED BY THE C.U.O.E. BECAUSE OF THE SEPARATE SENIORITY WHICH THE EMPLOYEES HAVE UNDER THE DIFFERENT COLLECTIVE AGREEMENTS WHICH HYDRO HAS WITH THE TWO TRADE UNIONS.

26. WHILE SPEAKING OF BARGAINING RIGHTS, THE FACT THAT THE BOARD SAW FIT IN THE EARLY 1950'S TO CERTIFY THE I.U.O.E. FOR SEPARATE UNITS



COVERING THE HEARN AND KEITH GENERATING STATIONS WHICH WERE CARVED OUT OF THE PROVINCE-WIDE UNIT THEN REPRESENTED BY THE HYDRO EMPLOYEES' ASSOCIATION HAS LITTLE PRECEDENT VALUE IN THE INSTANT APPLICATION. THE REASON FOR THIS IS THAT AT THE TIME THE BOARD CERTIFIED THE I.U.O.E. FOR THE HEARN AND KEITH GENERATING STATIONS, HYDRO WAS JUST EMBARKING ON ITS POST-WAR EXPANSION PROGRAM AND THE HYDRO SYSTEM THROUGHOUT THE PROVINCE AS WE KNOW IT TO-DAY DID NOT EXIST AT THAT TIME. ACCORDINGLY, THE FACTORS WHICH WE ARE CALLED UPON TO CONSIDER IN THE INSTANT APPLICATION ARE QUITE DIFFERENT FROM THOSE WHICH THE BOARD HAD TO TAKE INTO ACCOUNT IN THE EARLY 1950'S WHEN THE BOARD FOUND THE TWO NAMED GENERATING STATIONS TO BE APPROPRIATE UNITS. IN FACT, WE DO NOT KNOW WHAT SUBMISSIONS WERE ADVANCED WITH RESPECT TO THE TWO EARLIER APPLICATIONS AS NO REASONS FOR ITS DECISION WERE GIVEN BY THE BOARD IN EITHER APPLICATION.

27. THERE IS A LONG ESTABLISHED PATTERN OF COLLECTIVE BARGAINING THAT HAS EXISTED FOR MANY YEARS BETWEEN HYDRO AND CUPE LOCAL 1000 AND BEFORE IT THE EMPLOYEES' ASSOCIATION COVERING ALL OF HYDRO'S PRODUCTION EMPLOYEES WITH THE EXCEPTION OF THOSE EMPLOYEES REFERRED TO ABOVE REPRESENTED BY C.U.O.E. AND BEFORE IT THE I.U.O.E. MOREOVER, WITH REGARD TO ITS PRODUCTION EMPLOYEES, THE EVIDENCE INDICATES THAT THIS PATTERN OF PROVINCE-WIDE COLLECTIVE BARGAINING HAS RESULTED IN A FAIRLY STABLE RELATIONSHIP WHICH BY AND LARGE HAS BENEFITED AND PROTECTED THE INTERESTS OF THE EMPLOYEES CONCERNED AS WELL AS THE ECONOMIC INTERESTS OF HYDRO. THE BOARD IN THE PAST HAS DECLINED TO CERTIFY TRADE UNIONS ON A PROVINCE-WIDE BASIS AND GENERALLY HAS CONFINED UNITS TO THE MUNICIPALITY WHERE THE EMPLOYER IN A PARTICULAR INDUSTRY IS CARRYING ON HIS OPERATIONS. ON THE OTHER HAND, THE BOARD HAS BEEN RELUCTANT TO FRAGMENT EXISTING BARGAINING UNITS AND PATTERNS OF BARGAINING, WHETHER THEY CAME ABOUT AS A RESULT OF CERTIFICATION OR VOLUNTARY RECOGNITION, AS IN THE INSTANT CASE. IN THE PRESENT APPLICATION THE NATURE OF HYDRO'S OPERATIONS, THE SERVICE WHICH IT PROVIDES AND THE HISTORICAL EVOLUTION OF THE PATTERN OF COLLECTIVE BARGAINING WHICH EXISTS BETWEEN HYDRO AND CUPE LOCAL 1000 AND THE STABILITY OF THAT RELATIONSHIP ALL MILITATE AGAINST CARVING OUT THE BARGAINING UNIT SOUGHT BY THE APPLICANT FROM THE EXISTING UNIT OF PRODUCTION EMPLOYEES. ACCORDINGLY, BEFORE THE BOARD WOULD BE PREPARED TO CARVE OUT THE UNIT THAT THE APPLICANT IS SEEKING, THE APPLICANT MUST PROVIDE STRONG AND COMPELLING REASONS FOR DOING SO.

28. COUNSEL FOR THE APPLICANT HAS ADVANCED A NUMBER OF PERSUASIVE ARGUMENTS WHICH ARE SUPPORTED BY THE EVIDENCE FOR CARVING OUT THE EMPLOYEES OF THE HEAVY WATER PLANT FROM THE UNIT OF EMPLOYEES REPRESENTED BY CUPE LOCAL 1000. WE ARE NOT SATISFIED, HOWEVER, THAT THE PROPOSED UNIT WOULD BE CONDUCIVE TO ORDERLY AND EFFECTIVE COLLECTIVE BARGAINING. IN OTHER WORDS, HAVING CONSIDERED ALL OF THE EVIDENCE AND REPRESENTATIONS OF THE PARTIES, THE APPLICANT HAS FAILED TO PERSUADE US THAT THE UNIT WHICH IT IS SEEKING IS APPROPRIATE FOR COLLECTIVE BARGAINING.

29. WE WOULD STATE, HOWEVER, THAT OUR DECISION SHOULD NOT BE INTERPRETED TO MEAN THAT ANOTHER UNIT EITHER WITHIN THE EXISTING HYDRO SYSTEM

PRESENTLY REPRESENTED BY CUPE LOCAL 1000 OR EVEN WITHIN THE BRUCE NUCLEAR POWER DEVELOPMENT COMPLEX AT DOUGLAS POINT OR THE COMPLEX ITSELF WOULD NOT BE AN APPROPRIATE UNIT FOR COLLECTIVE BARGAINING. THERE MAY BE FACTORS OR CIRCUMSTANCES WHICH WOULD PERSUADE THE BOARD THAT SOME OTHER UNIT OR UNITS OF PRODUCTION EMPLOYEES OF HYDRO ARE APPROPRIATE FOR COLLECTIVE BARGAINING. OUR DECISION RELATES SOLELY TO THE UNIT SOUGHT BY THE APPLICANT IN THE INSTANT APPLICATION.

30. WE FIND THAT THE UNIT APPLIED FOR BY THE APPLICANT IN THIS APPLICATION IS NOT APPROPRIATE FOR COLLECTIVE BARGAINING. WE ARE FURTHER SATISFIED THAT THE APPLICANT DOES NOT HAVE THE REQUIRED EVIDENCE OF MEMBERSHIP TO ENTITLE IT TO EVEN THE TAKING OF A REPRESENTATION VOTE IN ANY OTHER UNIT WHICH THE BOARD MIGHT FIND TO BE APPROPRIATE FOR COLLECTIVE BARGAINING.

31. THE APPLICATION THEREFORE MUST BE AND IS HEREBY DISMISSED.

3673-73-U: HUTCHISON MECHANICAL INSTALLATIONS LTD. (APPLICANT) V. UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL UNION 527 AND JACK PORTER AND TOM CRYSTAL (RESPONDENTS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS A. MAIN AND J. E. C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: S. C. BERNARDO AND D. MCMURTRY FOR THE APPLICANT; STANLEY SIMPSON AND JACK PORTER FOR THE RESPONDENT.

DECISION OF THE BOARD: MAY 8, 1973.

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2. THIS IS AN APPLICATION FOR RELIEF UNDER SECTION 123 OF THE LABOUR RELATIONS ACT.

3. THE APPLICANT IS A SUB-CONTRACTOR FOR THE INSTALLATION OF PLUMBING AND HEATING ON THE ST. JAMES SCHOOL ADDITION PROJECT LOCATED AT 57 VICTORIA STREET NORTH IN THE CITY OF GUELPH.

4. THE BOARD FINDS THAT THE APPLICANT AND THE RESPONDENT UNION WERE BOUND BY THE TERMS OF A COLLECTIVE AGREEMENT WHICH EXPIRED ON THE 30TH OF APRIL, 1973. THE BOARD FURTHER FINDS THAT THE MINISTER HAS NOT APPOINTED A CONCILIATION OFFICER OR A MEDIATOR UNDER THE ACT.

5. IT WAS COMMON GROUND THAT ON APRIL 17TH, THE INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES SET UP A LEGAL PICKET LINE AT THE ST. JAMES SCHOOL SITE. THE PICKET LINE WAS IN EFFECT ON THE DATE OF THIS HEARING ON MAY 4, 1973.

6. COMMENCING ON APRIL 18TH AND WITH ONE BRIEF EXCEPTION THE EMPLOYEES OF THE APPLICANT HAVE REFUSED TO CROSS THE PICKET LINE TO WORK ON THE PROJECT NOTWITHSTANDING THE REPEATED REQUESTS OF THE APPLICANT THAT THEY RETURN TO WORK.

7. THE APPLICANT CONTENTS THAT THE REFUSAL OF ITS EMPLOYEES TO CROSS THE PICKET LINE AND REPORT FOR WORK CONSTITUTES AN ILLEGAL STRIKE AND REQUESTS THE BOARD TO ISSUE A DIRECTION TO THE RESPONDENTS TO CEASE COUNSELLING, PROCURING, SUPPORTING AND ENCOURAGING AN UNLAWFUL STRIKE.

8. THE RESPONDENTS ARGUED THAT THE REFUSAL OF THE EMPLOYEES TO CROSS THE PICKET LINE WAS NOT AN UNLAWFUL STRIKE BECAUSE OF THE PROVISIONS OF ARTICLE 3.13 OF THE COLLECTIVE AGREEMENT WHICH READS AS FOLLOWS:

### ARTICLE 3 - UNION SECURITY

13. IT SHALL NOT BE A VIOLATION OF THIS AGREEMENT IF MEMBERS OF THE UNION REFUSE TO CROSS A SANCTIONED PICKET LINE, ESTABLISHED IN ACCORDANCE WITH THE POLICIES AND RULES OF THE K-W AREA BUILDING TRADES COUNCIL.

9. IN VIEW OF THE DECISION OF THE BOARD IN THE ASSOCIATED FREEZERS OF CANADA LIMITED CASE, OLRB MONTHLY REPORT MAY 1972, P. 445 AND THE PIGOTT CONSTRUCTION LIMITED CASE, OLRB MONTHLY REPORT MARCH 1970, P. 1459, WHEREIN THE BOARD DECLARED THAT PARTIES TO A COLLECTIVE AGREEMENT CANNOT CONTRACT THEMSELVES OUT OF THE PROVISIONS OF THE LABOUR RELATIONS ACT CONCERNING STRIKES, THE BOARD, IN THE PRESENT INSTANCE, REJECTS THE ARGUMENT OF THE RESPONDENTS BASED UPON THE WORDING OF THE COLLECTIVE AGREEMENT.

10. THE BOARD FINDS ON THE EVIDENCE AND HAVING REGARD TO THE PROVISIONS OF SECTION 63 OF THE ACT THAT COMMENCING ON WEDNESDAY, APRIL 18, 1973 AND CONTINUING TO THE DATE OF THE HEARING ON MAY 4, 1973, THE EMPLOYEES OF THE APPLICANT HAVE ENGAGED IN AN UNLAWFUL STRIKE. THE BOARD FURTHER FINDS THAT UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL UNION 527 AUTHORIZED THE SAID UNLAWFUL STRIKE. THE BOARD FURTHER FINDS THAT THE RESPONDENTS JACK PORTER AND TOM CRYSTAL, OFFICERS OF THE SAID UNION, COUNSELLED, SUPPORTED AND ENCOURAGED THE SAID UNLAWFUL STRIKE.

11. HAVING REGARD TO THE EVIDENCE AND TO THE PROVISIONS OF SECTION 123 OF THE ACT, THE BOARD DIRECTS AS FOLLOWS:

- (1) THAT UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL UNION 527, SHALL REFRAIN FROM AUTHORIZING AN



UNLAWFUL STRIKE OF THE EMPLOYEES OF  
THE APPLICANT ON THE ST. JAMES SCHOOL  
PROJECT AT 57 VICTORIA STREET NORTH,  
IN GUELPH.

- (2) THAT JACK PORTER AND TOM CRYSTAL AND ANY OTHER OFFICER, OFFICIAL OR AGENT OF THE UNITED ASSOCIATION OF JOURNEY-MEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL UNION 527, SHALL REFRAIN FROM COUNSELLING, SUPPORTING OR ENCOURAGING AN UNLAWFUL STRIKE OF THE EMPLOYEES OF THE APPLICANT ON THE ST. JAMES PROJECT AT 57 VICTORIA STREET NORTH, IN GUELPH.

2589-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1669 (APPLICANT) V. SUPERCRETE LTD. (RESPONDENT) V. BUILDING MATERIAL DRIVERS AND HELPERS LOCAL 914 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (INTERVENER) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS H. J. F. ADE AND E. BOYER.

APPEARANCES AT THE HEARING: J. SACK, W. SHERMAN AND W. IMLAH FOR THE APPLICANT; ROBERT D. WEILER AND E. PENTLAND FOR THE RESPONDENT; W. W. TILLER FOR THE INTERVENER; WILLIAM OSHANIK FOR THE OBJECTORS.

DECISION OF THE BOARD: MAY 3, 1973.

1. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.
2. THE BOARD FURTHER FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 108 OF THE LABOUR RELATIONS ACT.
3. THE BOARD HAS CONSIDERED THE REPRESENTATIONS OF THE PARTIES IN CONNECTION WITH THE REPORT OF THE EXAMINER DATED MARCH 1, 1973. THE BOARD NOTES THE AGREEMENT OF THE APPLICANT, THE RESPONDENT AND THE INTERVENER THAT (I) M. KNYSH, CLASSIFIED BY THE RESPONDENT AS A SUPERINTENDENT, EXERCISED MANAGERIAL FUNCTIONS WITHIN THE MEANING OF THE LABOUR RELATIONS ACT AND (II) B. OSHANIK, CLASSIFIED BY THE RESPONDENT AS A CRANE OPERATOR, DID NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF THE LABOUR RELATIONS ACT AND IS INCLUDED IN THE BARGAINING UNIT.
4. IN ADDITION TO M. KNYSH AND B. OSHANIK, THE RESPONDENT HAD A THIRD EMPLOYEE, D. LOVEN, WORKING AT RED LAKE, ONTARIO, ON THE DATE OF

THE MAKING OF THIS APPLICATION. ON THE DATE OF THE MAKING OF THIS APPLICATION, MR. LOWEN WORKED FOR APPROXIMATELY THREE HOURS. DURING THIS TIME, HE SIGNALLLED THE CRANE OPERATOR, SPENT TWO HOURS ERECTING PRECAST AND ONE HOUR ON CLEAN UP. ON THE JOB AT RED LAKE, HE DID NOT HAVE THE AUTHORITY TO HIRE EMPLOYEES, DID NOT RECOMMEND HIRING OR DISMISSAL AND DID NOT PREPARE PROGRESS AND PERFORMANCE REPORTS ON EMPLOYEES. WHILE MR. LOWEN MAY WELL HAVE HAD GREATER AUTHORITY ON JOBS AND A DIFFERENT CLASSIFICATION IN MANITOBA, IT IS QUITE CLEAR THAT AT THE RED LAKE JOB IN ONTARIO HE WAS EMPLOYED BY THE RESPONDENT AS A WORKING FOREMAN WHO WAS ENGAGED IN DOING ERECTION WORK AND SIGNALLING. HAVING REGARD TO THE EVIDENCE BEFORE IT, THE BOARD FINDS THAT MR. LOWEN WAS ESSENTIALLY PERFORMING THE WORK OF AN ERECTOR OF PRECAST, THAT IS TO SAY, THE WORK OF A CONSTRUCTION LABOURER.

5. THE BOARD FURTHER FINDS THAT ON THE DATE OF THE MAKING OF THIS APPLICATION, THE RESPONDENT HAD IN ITS EMPLOY IN THE BOARD'S REGULAR GEOGRAPHIC AREA #24, A CRANE OPERATOR AND A CONSTRUCTION LABOURER WHO WAS A WORKING FOREMAN.

6. THE BOARD THEREFORE FURTHER FINDS THAT ALL CONSTRUCTION LABOURERS AND ALL EMPLOYEES OF THE RESPONDENT IN THE DISTRICT OF KENORA, INCLUDING THE PATRICIA PORTION, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

7. DURING THE INITIAL PHASES OF THIS APPLICATION, THE RESPONDENT AND THE INTERVENER ALLEGED THAT A COLLECTIVE AGREEMENT BETWEEN THEM, MADE ON FEBRUARY 16, 1972, COVERED THE EMPLOYEES AFFECTED BY THIS APPLICATION AND THAT THIS COLLECTIVE AGREEMENT WAS A BAR TO THIS APPLICATION FOR CERTIFICATION. AT THE HEARING ON APRIL 27, 1973, THE RESPONDENT AND THE INTERVENER DID NOT SERIOUSLY PRESS THIS COLLECTIVE AGREEMENT AS A BAR TO THIS APPLICATION.

8. THE BOARD HAS CONSIDERED THE REPRESENTATIONS OF THE PARTIES ON THIS COLLECTIVE AGREEMENT AND FINDS THAT IT DOES NOT COVER THE EMPLOYEES IN ONTARIO AFFECTED BY THIS APPLICATION.

9. THE REGISTRAR IS DIRECTED TO LIST THIS APPLICATION FOR CONTINUATION OF HEARING.

1322-71-R: THE GENERAL CONTRACTORS' SECTION OF THE TORONTO CONSTRUCTION ASSOCIATION (APPLICANT) V. THE CARPENTERS DISTRICT COUNCIL OF TORONTO AND VICINITY ON BEHALF OF LOCALS 27, 666, 681, 1133, 1747, 1963, 3227, 3233 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (RESPONDENT) V. HEAVY CONSTRUCTION ASSOCIATION OF TORONTO (INTERVENER).

RE: CLOVERLAWN INVESTMENTS LIMITED

BEFORE: D.F. FRANKS, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND H.J.F. AVE.

DECISION OF THE BOARD:

MAY 8, 1973.

1. THE SOLICITOR FOR THE RESPONDENT HAS BY LETTER DATED APRIL 26, 1973, REQUESTED THE BOARD TO RECONSIDER OR CLARIFY ITS DECISION OF APRIL 18, 1973 IN THIS MATTER. THE REQUEST OF THE RESPONDENT IS BASED UPON THE ALLEGATION THAT THE RESPONDENT WAS CERTIFIED AS THE BARGAINING AGENT FOR EMPLOYEES OF THIS PARTICULAR EMPLOYER WITHIN THE LAST FOUR MONTHS. THE PURPOSE OF SUCH A REQUEST IS TO CLARIFY WHETHER CLOVERLAWN INVESTMENTS LIMITED IS AN EMPLOYER IN THE UNIT OF EMPLOYERS.

2. A SEARCH OF THE BOARD'S RECORDS INDICATES THAT THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA WAS CERTIFIED AS THE BARGAINING AGENT FOR CERTAIN EMPLOYEES OF CLOVERLAWN INVESTMENTS LIMITED ON FEBRUARY 14, 1973 (BOARD FILE NO. 3202-72-R).

3. IN VIEW OF THE ABOVE CONSIDERATIONS THE REGISTRAR IS DIRECTED TO LIST THE ABOVE MATTER FOR HEARING TO CONSIDER WHETHER CLOVERLAWN INVESTMENTS LIMITED IS AN EMPLOYER IN THE UNIT OF EMPLOYERS. THE REGISTRAR SHALL NOTIFY THE APPLICANT AND THE RESPONDENT OF THIS HEARING AND SHALL NOTIFY THE PARTIES TO THE APPLICATION IN BOARD FILE NO. 3202-72-R.

3641-73-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. TWEED VENEERS LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS F. W. MURRAY AND P. J. O'KEEFE.

DECISION OF THE BOARD:

MAY 10, 1973.

1. THE NAME "TWEED VENEERS LTD." APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "TWEED VENEERS LIMITED".

2. THE APPLICANT HAS REQUESTED THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN.

3. THE RESPONDENT TOOK THE POSITION THAT THE EMPLOYEES WITH WHOM WE ARE HERE CONCERNED WERE COVERED BY A COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE TWEED VENEER SHOP UNION. THE AGREEMENT RELIED UPON BY THE RESPONDENT WAS TO REMAIN IN EFFECT FROM JUNE 1, 1968 TO JUNE 1, 1971 AND THEREAFTER FROM YEAR TO YEAR SUBJECT TO NOTICE. HOWEVER, THE EVIDENCE FURTHER ESTABLISHED THAT WHILE THE SAID COLLECTIVE AGREEMENT CONTAINED CHECK-OFF PROVISIONS THE RESPONDENT CEASED TO MAKE DEDUCTIONS FOR UNION DUES IN 1971. THE LAST PRESIDENT OF THE EMPLOYEES' ASSOCIATION STATED THAT WHEN HE TOOK OVER THE PRESIDENCY HE ENDEAVOURED TO HOLD UNION MEETINGS WITHOUT SUCCESS AND HE GAVE UP AFTER THE LAST MEETING OF THE



ASSOCIATION WHICH WAS HELD SOME TIME PRIOR TO JUNE 1971. THE SECRETARY-TREASURER OF THE ASSOCIATION ALSO TURNED THE RECORD BOOK AND THE BANK BOOK OF THE ASSOCIATION IN TO THE RESPONDENT'S OFFICE SOME TIME DURING 1971.

4. THE BOARD FINDS ON THE EVIDENCE REFERRED TO ABOVE THAT THE TWEED VENEER SHOP UNION CEASED TO FUNCTION AS A TRADE UNION IN 1971 AND THIS FACT WAS RECOGNIZED BY THE RESPONDENT WHEN IT CEASED TO DEDUCT UNION DUES PURSUANT TO THE PROVISIONS OF THE COLLECTIVE AGREEMENT THAT IT HAD PREVIOUSLY ENTERED INTO WITH THE TWEED VENEER SHOP UNION. ON THE EVIDENCE BEFORE US WE THEREFORE FIND THAT THE TWEED VENEER SHOP UNION HAS ABANDONED ANY BARGAINING RIGHTS IT MAY HAVE HAD WITH RESPECT TO THE EMPLOYEES WITH WHOM WE ARE HERE CONCERNED.

5. IT APPEARS TO THE BOARD ON AN EXAMINATION OF THE RECORDS OF THE APPLICANT AND THE RECORDS OF THE RESPONDENT THAT NOT LESS THAN THIRTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE VOTING CONSTITUENCY HEREINAFTER DESCRIBED WERE MEMBERS OF THE APPLICANT AT THE TIME THE APPLICATION WAS MADE.

6. THE BOARD DIRECTS THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE FOLLOWING VOTING CONSTITUENCY:

ALL EMPLOYEES OF THE RESPONDENT AT TWEED,  
SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE  
RANK OF FOREMAN, OFFICE AND SALES STAFF,  
PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN  
24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING  
THE SCHOOL VACATION PERIOD.

7. ALL EMPLOYEES OF THE RESPONDENT IN THE VOTING CONSTITUENCY ON THE 2ND DAY OF MAY, 1973 WHO HAVE NOT VOLUNTARILY TERMINATED THEIR EMPLOYMENT OR WHO HAVE NOT BEEN DISCHARGED FOR CAUSE BETWEEN THE 2ND DAY OF MAY, 1973 AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

8. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BE REPRESENTED BY THE APPLICANT IN THEIR EMPLOYMENT RELATIONS WITH THE RESPONDENT.

9. THE MATTER IS REFERRED TO THE REGISTRAR.

1516-71-R: THE HEAVY CONSTRUCTION ASSOCIATION OF TORONTO (APPLICANT)  
V. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (RESPONDENT).

BEFORE: D.E. FRANKS, VICE-CHAIRMAN, AND BOARD MEMBERS H.J.F. ADE AND E. BOYER.

APPEARANCES AT THE HEARING: B.W. BINNING AND WM. GIBSON FOR THE APPLI-

CANT; A.M. MINSKY AND JOHN STEFANINI FOR THE RESPONDENT; DANIEL FRYZUK FOR ARMSTRONG BROS. COMPANY LIMITED.

DECISION OF THE BOARD:

MAY 16, 1973.

. . .

6. BOTH THE APPLICANT AND THE RESPONDENT IN THEIR FILINGS SUGGESTED THAT THE APPROPRIATE UNIT OF EMPLOYERS IN THIS CASE WOULD BE:

"ALL EMPLOYERS OF EMPLOYEES FOR WHOM THE RESPONDENT HAS BARGAINING RIGHTS IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK, THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING, THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON, AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO IN THE HEAVY ENGINEERING SECTOR AND ON ALL TORONTO TRANSIT COMMISSION PROJECTS."

THE APPROPRIATE UNIT OF EMPLOYERS MUST SET OUT A GEOGRAPHIC AREA AND A SECTOR OF THE CONSTRUCTION INDUSTRY AND THE APPLICANT AND RESPONDENT HAVE CLAIMED AS THE APPROPRIATE GEOGRAPHIC AREA FOR ACCREDITATION THE AREA IN THE COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT. INDEED, THIS IS THE STANDARD AREA FOR COLLECTIVE AGREEMENTS IN THE TORONTO AREA. THE SECTOR OF THE CONSTRUCTION INDUSTRY CLAIMED AS APPROPRIATE IS "THE HEAVY ENGINEERING SECTOR AND ALL TORONTO TRANSIT COMMISSION SUBWAY PROJECTS".

7. IT IS TO BE NOTED THAT ALTHOUGH THE "HEAVY ENGINEERING SECTOR" APPEARS AS AN ENUMERATED SECTOR IN CLAUSE (E) OF SECTION 106 OF THE ACT "TORONTO TRANSIT COMMISSION SUBWAY PROJECTS" DOES NOT APPEAR AS AN ENUMERATED SECTOR IN THAT DEFINITION. AT THE HEARING IN THIS MATTER BOTH THE APPLICANT AND THE RESPONDENT AGREED THAT THE APPROPRIATE SECTOR FOR ACCREDITATION SHOULD BE DESCRIBED AS THE HEAVY ENGINEERING SECTOR WITH A CLARITY NOTE AS FOLLOWS: "INCLUDING TORONTO TRANSIT COMMISSION SUBWAY CONSTRUCTION AND TUNNEL CONSTRUCTION IN THE HEAVY ENGINEERING SECTOR". IN SUPPORT OF THE PROPOSED CLARITY NOTE THE APPLICANT ARGUES THAT THERE ARE THREE ALTERNATIVES OPEN TO THE BOARD IN DESCRIBING THE APPROPRIATE UNIT OF EMPLOYERS IN THIS MATTER. THE FIRST ALTERNATIVE IS THAT THE BOARD COULD FIND THAT BOTH SUBWAY CONSTRUCTION AND TUNNELLING ARE PROJECTS FALLING WITHIN THE HEAVY ENGINEERING SECTOR OF THE CONSTRUCTION INDUSTRY. THE SECOND ALTERNATIVE IS THAT THE BOARD COULD FIND THAT BOTH SUBWAY CONSTRUCTION AND TUNNEL CONSTRUCTION ARE SEPARATE SECTORS OF THE CONSTRUCTION INDUSTRY APPROPRIATE FOR ACCREDITATION IN THE PRESENT CASE. IN SUPPORT OF THIS CONTENTION THE APPLICANT ARGUED THAT BOTH THE HISTORY OF BARGAINING AND THE SIMILARITY OF WORK WERE GROUNDS FOR COMBINING THESE SECTORS IN THIS APPLICATION. THE THIRD ALTERNATIVE PUT FORTH BY THE APPLICANT IS THAT THE SECTORS SET OUT IN CLAUSE (E) OF

SECTION 106 OF THE ACT ARE NOT EXHAUSTIVE AND THE BOARD OUGHT TO FIND AN ADDITIONAL SECTOR "TRANSIT SECTOR AND THIS SECTOR SHOULD BE COMBINED WITH THE HEAVY ENGINEERING SECTOR IN THE PRESENT APPLICATION. THE APPLICANT, HOWEVER, STRESSED THAT THE CORRECT COURSE OF ACTION FOR THE BOARD IN THIS CASE WOULD BE TO ACCEPT THE FIRST ALTERNATIVE AND STATED THAT BOTH TORONTO TRANSIT COMMISSION PROJECTS AND TUNNELLING PROJECTS FALL WITHIN THE HEAVY ENGINEERING SECTOR OF THE CONSTRUCTION INDUSTRY.

8. COUNSEL FOR THE RESPONDENT IN HIS ARGUMENT URGED THE BOARD TO ACCEPT THE FIRST ALTERNATIVE SET OUT BY THE APPLICANT AND ARGUED THAT THE SECOND AND THIRD ALTERNATIVES WERE NOT OPEN TO THE BOARD IN THE PRESENT CASE. IN SUPPORT OF HIS CONTENTION THAT BOTH SUBWAY CONSTRUCTION AND TUNNEL CONSTRUCTION ARE PART OF THE HEAVY ENGINEERING SECTOR, COUNSEL FOR THE RESPONDENT SUGGESTS THAT THE WORK CHARACTERISTICS IN SUBWAY CONSTRUCTION FALL INTO THE HEAVY ENGINEERING DIVISION OF THE CONSTRUCTION INDUSTRY IN THAT THE TYPE OF MACHINERY USED, THE SKILLS REQUIRED AND THE WORK DONE ARE SIMILAR. WITH RESPECT TO TUNNELLING HE ARGUED THAT TUNNELLING IS HEAVY ENGINEERING EXCEPT IN RESPECT OF CERTAIN TYPES OF TUNNELS, PARTICULARLY THOSE RELATED TO UTILITY CONSTRUCTION, NAMELY, SEWERS AND WATERMAINS. THE RESPONDENT ALSO ARGUED THAT THE PATTERN OF BARGAINING IN THE CONSTRUCTION INDUSTRY IN THE GEOGRAPHIC AREA UNDER CONSIDERATION REFLECTS THAT SUBWAY CONTRACTORS HAVE BEEN REPRESENTED BY THE APPLICANT IN BARGAINING WITH THE RESPONDENT, AND THAT THIS HAS RESULTED IN ONE BARGAINING PATTERN WHICH NOT ONLY COVERS HEAVY ENGINEERING BUT ALSO INCLUDES SUBWAY CONSTRUCTION AND TUNNEL CONSTRUCTION.

9. BEFORE DEALING WITH THE ARGUMENTS RAISED BY THE APPLICANT AND THE RESPONDENT CONCERNING THE PROPOSED CLARITY NOTE, IT IS NECESSARY TO CONSIDER THE EFFECT OF SUCH A CLARITY NOTE WITHIN THE FRAMEWORK OF THE ACCREDITATION PROVISIONS OF THE ACT. IN AN APPLICATION FOR ACCREDITATION THE BOARD IS EXERCISING A STATUTORY POWER OF DECISION CONFERRED UPON IT BY THE LEGISLATURE OF THE PROVINCE OF ONTARIO. THAT POWER OF DECISION IS NOT SIMPLY A MATTER OF PERFORMING CERTAIN OPERATIONS AS DIRECTED BY THE ACT AS, FOR EXAMPLE, THOSE SET OUT IN SECTION 115, BUT THE BOARD IS ALSO REQUIRED TO GIVE EFFECT TO THE RELEVANT PROVISION OF THE STATUTE AS A WHOLE. THUS, BY SECTION 114 WHICH REQUIRES THE BOARD TO DETERMINE THE APPROPRIATE UNIT OF EMPLOYERS - THE BOARD MUST DETERMINE THE APPROPRIATE SECTOR OF THE CONSTRUCTION INDUSTRY FOR ACCREDITATION. THE TERM SECTOR IS DEFINED IN CLAUSE (E) OF SECTION 106 AS FOLLOWS:

106.

(E) "SECTOR" MEANS A DIVISION OF THE CONSTRUCTION INDUSTRY AS DETERMINED BY WORK CHARACTERISTICS AND INCLUDES THE INDUSTRIAL, COMMERCIAL AND INSTITUTIONAL SECTOR, THE RESIDENTIAL SECTOR, THE SEWERS, TUNNELS AND WATERMAINS SECTOR, THE ROADS SECTOR, THE HEAVY ENGINEERING SECTOR, THE PIPELINE SECTOR AND THE ELECTRICAL POWER SYSTEMS SECTOR.



THE BOARD MUST THEREFORE APPLY THE DEFINITION SET OUT IN SECTION 106 IN ITS DETERMINATION IN SECTION 114 OF THE APPROPRIATE UNIT OF EMPLOYERS. IT IS CLEAR THAT THE BOARD CANNOT ALLOW THE PARTIES BY A CLARITY NOTE OR ANY OTHER INTERPRETATIVE DEVICE TO AMEND THE DEFINITION SET OUT IN SECTION 106(E) OF THE ACT. THE BOARD UNDER SUBSECTION 1 OF SECTION 114 MAY COMBINE PARTS OF SECTORS BUT IT CANNOT UNDER THE GUISE OF DETERMINING THE APPROPRIATE SECTOR ALTER THE DEFINITION OF SECTOR SET OUT IN SECTION 106(E). THE QUESTION OF WHETHER THE BOARD SHOULD ALLOW THE CLARITY NOTE PROPOSED BY THE APPLICANT AND THE RESPONDENT IN THIS CASE THEREFORE RESOLVES ITSELF INTO A MATTER OF WHETHER THAT CLARITY NOTE IS CONSISTENT WITH THE DEFINITION OF SECTOR IN THE LEGISLATION. IF THE CLARITY NOTE IS CONSISTENT THEN IT COULD BE ALLOWED. IF, HOWEVER, IT AMOUNTS TO AMENDING THE DEFINITION IN THE ACT THEN THE BOARD CANNOT ALLOW SUCH A CLARITY NOTE.

10. WE MUST THUS TURN TO AN EXAMINATION OF THE MEANING OF SECTION 106(E) OF THE ACT WHICH DEFINES THE TERM SECTOR. AN EXAMINATION OF THAT DEFINITION INDICATES THAT IT CONTAINS THREE COMPONENTS. THE FIRST COMPONENT IS THAT SECTOR IS A DIVISION OF THE CONSTRUCTION INDUSTRY. THE TERM CONSTRUCTION INDUSTRY IS DEFINED IN THE LABOUR RELATIONS ACT IN SECTION 1(1)(F) WHICH READS AS FOLLOWS:

1.-(1)(F) "CONSTRUCTION INDUSTRY" MEANS THE  
BUSINESSES THAT ARE ENGAGED IN  
CONSTRUCTING, ALTERING, DECORATING,  
REPAIRING OR DEMOLISHING BUILDINGS,  
STRUCTURES, ROADS, SEWERS, WATER OR  
GAS MAINS, PIPE LINES, TUNNELS,  
BRIDGES, CANALS OR OTHER WORKS AT  
THE SITE THEREOF.

ALTHOUGH CERTAIN TERMS APPEARING IN THE DEFINITION OF CONSTRUCTION INDUSTRY ALSO APPEAR IN CLAUSE (E) OF SECTION 106, THE RELATIONSHIP BETWEEN THESE TWO DEFINITIONS IS NOT SUFFICIENT TO AFFORD ANY ASSISTANCE IN INTERPRETING THE MEANING OF THE TERM SECTOR.

11. THE SECOND COMPONENT OF THE DEFINITION IN CLAUSE (E) OF SECTION 106 SETS OUT THE METHOD BY WHICH DIVISIONS OF THE CONSTRUCTION INDUSTRY ARE TO BE DETERMINED. THUS, THE DIVISIONS OF THE CONSTRUCTION INDUSTRY WHICH CONSTITUTE SECTORS ARE TO BE "DETERMINED BY WORK CHARACTERISTICS". ON THE OTHER HAND THE EXPRESSION "WORK CHARACTERISTICS" IS ONE WHICH IS OPEN TO A VARIETY OF MEANINGS AND THE PROBLEM OF INTERPRETING THIS SECTION IS LARGELY ONE OF ASCRIBING THE CORRECT MEANING TO THIS EXPRESSION.

12. THE THIRD AND REMAINING COMPONENT OF THE DEFINITION OF SECTOR IS THE ENUMERATION OF SEVEN SECTORS OF THE CONSTRUCTION INDUSTRY WHICH ARE INCLUDED AS MEANINGS OF THE TERM SECTOR OF THE CONSTRUCTION INDUSTRY. THESE, IN TURN, RAISE THE ADDITIONAL PROBLEM OF ASCRIBING THE CORRECT MEANING TO EACH OF THE INDIVIDUAL SECTORS SO ENUMERATED.

13. ALTHOUGH THE DEFINITION OF SECTOR CAN BE BROKEN DOWN INTO THESE THREE COMPONENT PARTS, CLEARLY THE STARTING POINT IN INTERPRETING THE STATUTORY LANGUAGE USED IN THE DEFINITION IS THE OBSERVATION THAT THEY CONSTITUTE ONE DEFINITION IN THE ACT. THUS, IT IS CLEAR THAT WHEN THE LEGISLATURE ENUMERATED THE SPECIFIC SECTORS SET OUT IN THE DEFINITION IT MUST BE TAKEN TO HAVE APPLIED THE TEST SET OUT IN THAT SECTION WHEN ENUMERATING THE SECTORS NAMED THEREIN. THAT IS TO SAY THE ENUMERATED SECTORS ARE DIVISIONS OF THE CONSTRUCTION INDUSTRY DETERMINED BY WORK CHARACTERISTICS. THUS, THE ENUMERATED SECTORS GIVE US A KEY TO INTERPRETING THE EXPRESSION "WORK CHARACTERISTICS" AND IN TURN ONCE THE EXPRESSION WORK CHARACTERISTICS IS CLARIFIED THIS WILL PROVIDE ASSISTANCE IN THE CORRECT INTERPRETATION OF EACH OF THE ENUMERATED SECTORS.

14. AN EXAMINATION OF THE ENUMERATED SECTORS IN CLAUSE (E) OF SECTION 106 LEADS TO THE CONCLUSION THAT FOR ALL BUT ONE OF THE SECTORS LISTED THE NAMES GIVEN TO THESE DIVISIONS OF THE CONSTRUCTION INDUSTRY RELATE TO THE USE WHICH IS ULTIMATELY MADE OF THE CONSTRUCTION. AT FIRST THIS MAY APPEAR TO BE SOMEWHAT OF A PUZZLE IN THAT THE CONNECTION BETWEEN THE USE OF THE CONSTRUCTION AND THE WORK CHARACTERISTICS MAY NOT BE OBVIOUS. OPEN EXAMINATION, HOWEVER, IT BECOMES CLEAR THAT THE USE THAT IS ULTIMATELY MADE OF THE CONSTRUCTION WILL TO A LARGE EXTENT DETERMINE THE TASK OR THE WORK TO BE PERFORMED AT THE CONSTRUCTION SITE. THE TASK IN TURN WILL HAVE CERTAIN CHARACTERISTICS WHICH MAKE THAT PROJECT DISTINGUISHABLE FROM OTHER TYPES OF CONSTRUCTION. THUS, EACH OF THE SECTORS ENUMERATED, BY FOCUSING ON THE DIFFERENT END USES OF THE CONSTRUCTION, DISTINGUISHES ONE TYPE OF CONSTRUCTION FROM OTHER TYPES OF CONSTRUCTION ON THE BASIS OF PECULIAR TASKS WHICH ARE COMMON TO THAT TYPE OF PROJECT. THE WORK CHARACTERISTICS WHICH DISTINGUISH ONE SECTOR FROM THE OTHER SECTORS OF THE CONSTRUCTION INDUSTRY MAY BE SHOWN IN TERMS OF THE TYPE OF PROBLEMS TO BE DEALT WITH AT THE JOB SITE, THE TYPES OF SOLUTIONS RESORTED TO AT CERTAIN JOB SITES, THE MATERIAL USED, THE RELATIVE IMPORTANCE OF VARIOUS SPECIFICATIONS, THE VARIETY OF SKILLS AND TRADES, AND CERTAIN CHARACTERISTIC RELATIONS WITH EMPLOYEES. THIS LIST OF CHARACTERISTICS IS NOT TO BE THOUGHT OF AS EXHAUSTIVE, BUT AS EXAMPLES OF PARTICULAR CHARACTERISTICS WHICH DIFFER BETWEEN THE VARIOUS SECTORS ENUMERATED IN THE ACT.

15. HAVING GIVEN A MEANING TO THE TEST FOR DETERMINING SECTORS ON THE BASIS OF WORK CHARACTERISTICS WE CAN NOW TURN TO USE THIS MEANING AS A TOOL FOR OBTAINING THE CRITERIA WHICH SEPARATE ONE SECTOR FROM ANOTHER SECTOR OF THE CONSTRUCTION INDUSTRY. HOWEVER, AS NOTED ABOVE THERE IS ONE SECTOR WHICH UNLIKE THE OTHER SECTORS ENUMERATED IN THE ACT DOES NOT REFER TO THE END USE MADE OF THE CONSTRUCTION IN THAT SECTOR. THIS IS THE HEAVY ENGINEERING SECTOR, WHICH IS THE SUBJECT MATTER OF THIS APPLICATION. THE NAME OF THIS SECTOR COMES FROM THE VIEW THAT THE DIVISION OF THE CONSTRUCTION INDUSTRY WITH WHICH IT IS CONCERNED HAS DISTINCT PECULARITIES. AS THE NAME IMPLIES THE PROBLEMS FACED IN SUCH CONSTRUCTION PROJECTS ARE PRIMARILY ENGINEERING PROBLEMS AS DISTINCT FROM DESIGN OR ARCHITECTURAL PROBLEMS. THUS, FOR INSTANCE, THESE ARE PROJECTS IN WHICH IT IS MORE IMPORTANT THAT THEY SERVE THEIR INTENDED FUNC-

TION RATHER THAN BE ATTRACTIVE. THE OTHER CHARACTERISTIC OF CONSTRUCTION IN THIS SECTOR IS THAT IT INVOLVES THE USE OF "HEAVY EQUIPMENT". THAT IS EQUIPMENT WHICH IS CAPABLE OF LIFTING, FOR EXAMPLE, HEAVY STEEL OR CONCRETE BEAMS OR EQUIPMENT THAT IS CAPABLE OF MOVING HUGE AMOUNTS OF EARTH, STONE OR CONCRETE. PERHAPS THE CLASSIC EXAMPLE OF A HEAVY ENGINEERING PROJECT IS THE CONSTRUCTION OF A LARGE BRIDGE.

16. HOWEVER, IF WE TRY TO DEFINE THE HEAVY ENGINEERING SECTOR IN TERMS OF THE EMPHASIS OF ENGINEERING PROBLEMS AND THE USE OF LARGE SCALE EQUIPMENT, WE ARE CONFRONTED WITH THE PROBLEM THAT THESE TWO CHARACTERISTICS ARE NOT SUFFICIENT TO DISTINGUISH PROJECTS WHICH CLEARLY FALL INTO THE OTHER ENUMERATED SECTORS. THUS, FOR INSTANCE, THE CONSTRUCTION OF A LARGE REFINERY, STEEL MILL, POWER STATION OR SEWAGE SETTLING BASIN MAY HAVE THESE SAME CHARACTERISTICS. WE ARE THUS FACED WITH THE POTENTIAL CONFLICT THAT ANY PROJECT IN ANY OF THE OTHER SECTORS CAN ARGUABLY BE PLACED IN THE HEAVY ENGINEERING SECTOR IF THE PROBLEM IS AN ENGINEERING PROBLEM AND THE EQUIPMENT USED IS LARGE SCALE OR HEAVY EQUIPMENT. CLEARLY, SECTION 106(E) SHOULD NOT BE INTERPRETED IN A WAY TO ALLOW SUCH AN AMBIGUITY OR UNCERTAINTY AS TO THE MEANING OF THE TERM "SECTOR". THE PROBLEM, HOWEVER, IS NOT DIFFICULT TO OVERCOME. AS POINTED OUT EARLIER, THE OTHER SECTORS ARE DEFINED IN TERMS OF THE USE ULTIMATELY MADE OF THE CONSTRUCTION. THIS HAS THE CLEAR ADVANTAGE OF DETERMINING THE SECTOR AT THE EARLIEST STAGES OF THE PROJECT. THUS ANY UNCERTAINTY AS TO WHETHER THE PROJECT FALLS IN ONE SECTOR OR ANOTHER CAN BE REMOVED EVEN BEFORE WORK HAS COMMENCED AT THE JOB SITE. THE REMOVAL OF SUCH AN UNCERTAINTY IS, OF COURSE, A DESIRABLE GOAL IN LABOUR RELATIONS AND INDEED THE LEGISLATURE IN ITS WISDOM HAS SEEN FIT TO REMOVE THE UNCERTAINTY FROM THE DEFINITION BY LABELLING THE OTHER SECTORS WITH NAMES DESIGNATING THE END USE OF THE PROJECT.

17. IN VIEW OF THE FOREGOING CONSIDERATIONS IT IS CLEAR THAT THERE ARE SERIOUS DIFFICULTIES WITH THE CLARITY NOTE PROPOSED BY THE APPLICANT AND THE RESPONDENT. SUCH A CLARITY NOTE WOULD ADD A GREAT DEAL OF UNCERTAINTY TO THE DEFINITION OF SECTOR IN SECTION 106(E) BECAUSE IT WOULD ALLOW TYPES OF CONSTRUCTION TO BE REMOVED FROM ONE SECTOR AND PLACED IN THE HEAVY ENGINEERING SECTOR SIMPLY ON THE BASIS OF HOW THE CONTRACTOR SEES THE OVERALL PROJECT. THAT IS, IF THE CONTRACTOR SAW THE PROJECT AS BEING PRINCIPALLY AN ENGINEERING PROBLEM AND THAT THE BEST SOLUTIONS FOR THE CONSTRUCTION PROBLEMS LAY IN THE USE OF LARGE OR HEAVY EQUIPMENT, THEN THAT CONTRACTOR COULD CLAIM TO BE IN THE HEAVY ENGINEERING SECTOR RATHER THAN FOR INSTANCE THE INDUSTRIAL, COMMERCIAL AND INSTITUTIONAL SECTOR OF THE CONSTRUCTION INDUSTRY.

18. THE REQUEST BY THE APPLICANT AND THE RESPONDENT DEALS WITH TWO SPECIFIC TYPES OF CONSTRUCTION, NAMELY TORONTO TRANSIT COMMISSION SUBWAY PROJECTS AND TUNNELLING PROJECTS. WE WILL FIRST DEAL WITH THE MATTER OF TUNNELLING. ONE OF THE ENUMERATED SECTORS IN SECTION 106(E) IS THE SEWERS, TUNNELS AND WATERMAINS SECTOR. TO GRANT THE REQUEST OF THE APPLICANT AND THE RESPONDENT WOULD BE TO SAY IN EFFECT THAT CERTAIN TUNNELS NO LONGER FALL INTO THE SEWERS, TUNNELS AND WATERMAINS SECTOR



BUT FALL INTO THE HEAVY ENGINEERING SECTOR. INDEED IN SUPPORT OF THE PROPOSED CLARITY NOTE THE RESPONDENT ARGUED THAT ALL TUNNELS ARE HEAVY ENGINEERING PROJECTS EXCEPT THOSE RELATED TO SEWERS AND WATERMAINS. HOWEVER, IF THIS WERE THE CASE THERE WOULD HAVE BEEN NO NEED FOR THE LEGISLATURE TO USE THE TERM "TUNNELS" AT ALL, MUCH LESS INCLUDE IT WITH SEWERS AND WATERMAINS, IN THE SEWERS, TUNNELS AND WATERMAINS SECTOR ENUMERATED IN SECTION 106(E). SINCE ON THE FACE OF IT ALL TUNNELLING PROJECTS WOULD APPEAR TO FALL INTO THE SEWERS, TUNNELS AND WATERMAINS SECTOR IT WOULD TAKE CLEAR AND COMPELLING REASONS FOR REMOVING TUNNELS FROM THAT SECTOR AS A MATTER OF INTERPRETATION OF THE DEFINITION IN THE ACT. SUCH AN INTERPRETATION WOULD ADD A GREAT DEAL OF UNCERTAINTY TO ANY TUNNELLING PROJECT SINCE IT BECOMES OPEN TO ARGUMENT WHICH SECTOR OF THE CONSTRUCTION INDUSTRY THE PARTICULAR PROJECT FALLS INTO. IT SHOULD BE POINTED OUT THAT THE REQUEST HERE IS NOT THAT PART OF THE SEWERS, TUNNELS AND WATERMAINS SECTOR, THAT IS THE TUNNEL PART, BE ADDED TO THE HEAVY ENGINEERING SECTOR AS THE APPROPRIATE SECTOR OF THE CONSTRUCTION INDUSTRY FOR ACCREDITATION IN THE PRESENT INSTANCE. THAT, OF COURSE, IS A POWER THE BOARD COULD EXERCISE UNDER SECTION 114(1). THE REQUEST HERE IS RATHER THAT BY INTERPRETATION OF SECTION 106(E) CERTAIN TYPES OF TUNNELS WOULD FALL INTO THE HEAVY ENGINEERING SECTOR OF THE CONSTRUCTION INDUSTRY.

19. HOWEVER, NEITHER THE APPLICANT NOR THE RESPONDENT HAVE SUGGESTED CLEAR AND COMPELLING REASONS WHY SUCH AN EXPANDED INTERPRETATION OF THE HEAVY ENGINEERING SECTOR SHOULD BE ALLOWED IN THE PRESENT CASE. THE WORK CHARACTERISTICS IN TUNNEL CONSTRUCTION MAY HAVE CERTAIN CHARACTERISTICS IN COMMON WITH THOSE IN HEAVY ENGINEERING. ON THE OTHER HAND TUNNEL CONSTRUCTION HAS CERTAIN CHARACTERISTICS THAT ARE QUITE DIFFERENT FROM HEAVY ENGINEERING PROJECTS. THUS, FOR INSTANCE, TUNNELLING IS LARGELY INDEPENDENT OF THE WEATHER AND ALTHOUGH THE EQUIPMENT USED IN TUNNEL CONSTRUCTION IS ON OCCASION LARGE EQUIPMENT IT IS NOT OF THE VARIED NATURE OF EQUIPMENT ENCOUNTERED IN A HEAVY ENGINEERING PROJECT. NOR CAN THE APPLICANT OR THE RESPONDENT CLAIM ANY SIGNIFICANCE FROM THE BARGAINING PATTERNS. EVEN ALLOWING THE CONTENTION BY THE PARTIES THAT BARGAINING IN TUNNELLING IS DONE BY THE HEAVY ENGINEERING ASSOCIATION, THE EVIDENCE BEFORE THE BOARD IS THAT THERE ARE SEPARATE AGREEMENTS RELATING TO SUBWAY CONSTRUCTION AND TO TUNNELLING. THUS, THE BARGAINING ARRANGEMENTS ARE NOT THAT COMMON THAT THEY HAVE BEEN EMBODIED IN ONE COLLECTIVE AGREEMENT WHICH IS APPLIED TO HEAVY ENGINEERING PROJECTS AND TUNNELLING PROJECTS. FOR THESE REASONS IT IS CLEAR THAT THE BOARD CANNOT ALLOW THAT PART OF THE CLARITY NOTE REQUESTED BY THE APPLICANT AND THE RESPONDENT WHICH RELATES TO TUNNEL CONSTRUCTION IN THE HEAVY ENGINEERING SECTOR. TUNNEL CONSTRUCTION IS TUNNEL CONSTRUCTION AND IT FALLS INTO SEWERS, TUNNELS AND WATERMAINS SECTOR AND NOT THE HEAVY ENGINEERING SECTOR.

20. WE TURN NOW TO THE OTHER PART OF THE PROPOSED CLARITY NOTE, NAMELY THAT TORONTO TRANSIT COMMISSION SUBWAY CONSTRUCTION FALLS INTO THE HEAVY ENGINEERING SECTOR. AS A PRELIMINARY OBSERVATION IT SHOULD BE POINTED OUT THAT THE BOARD IS LOATHE TO NAME THE TORONTO TRANSIT COMMISSION AS THIS SINGLES OUT CERTAIN PROJECTS ON THE BASIS OF THE PURCHASERS OF THE CONSTRUCTION, AND THIS BOARD IS OF THE OPINION THAT

SUCH A STEP IS NOT A DESIRABLE METHOD OF DEFINING THE LIMITS OF A UNIT OF EMPLOYERS. HOWEVER, IF WE WERE TO DEAL WITH SUBWAY CONSTRUCTION WITHOUT NAMING THE TORONTO TRANSIT COMMISSION IN THE CLARITY NOTE THERE ARE A NUMBER OF PROBLEMS. IT WAS CONCEDED BY BOTH THE APPLICANT AND THE RESPONDENT IN THEIR REPRESENTATIONS TO THE BOARD IN THIS MATTER THAT THE SUBWAY CONSTRUCTION IN QUESTION CERTAINLY DID NOT INCLUDE THE CONSTRUCTION OF ABOVE GROUND STATIONS AND PERHAPS DID NOT INCLUDE THE FINISHING OF THE UNDERGROUND STATIONS. INDEED, NO CLEAR LINE WAS SUGGESTED AS TO WHERE THE LIMIT SHOULD BE DRAWN ENDING THE PROPOSED HEAVY ENGINEERING SECTOR IN THIS REGARD. NEVERTHELESS THE PROJECTS TO WHICH THIS CLARITY NOTE IS SPECIFICALLY DIRECTED ARE THE CONSTRUCTION OF THE SUBWAY TUNNELS AS DISTINCT FROM STATIONS. CLEARLY THERE IS NO DOUBT IN CHARACTERISING THE SUBJECT MATTER OF THESE PROJECTS AS TUNNELS.

21. IT WAS REPRESENTED TO THE BOARD AND IT IS WELL KNOWN THAT SUBWAY CONSTRUCTION IS DONE BY TWO DIFFERENT TECHNIQUES. ON THE ONE HAND SOME SUBWAYS ARE CONSTRUCTED BY TUNNELLING UNDERGROUND WHEREAS OTHER SUBWAY TUNNELS ARE CONSTRUCTED BY A "CUT AND COVER" METHOD OF TUNNEL CONSTRUCTION IN WHICH A HUGH TRENCH IS DUG, A TUNNEL OR ENCLOSURE IS CONSTRUCTED AND THEN THE WORK IS COVERED SO THAT THE END EFFECT IS A TUNNEL. ALTHOUGH IT MAY BE ARGUED THAT THE WORK CHARACTERISTICS IN THE CONSTRUCTION OF A TUNNEL BY THE CUT AND COVER METHOD ARE SIMILAR TO THOSE IN THE HEAVY ENGINEERING SECTOR, THE QUESTION WE ARE HERE CONCERNED WITH IS WHETHER THESE WORK CHARACTERISTICS ARE SUFFICIENTLY DIFFERENT FROM THOSE IN THE TUNNELLING SECTOR OF THE CONSTRUCTION INDUSTRY. CLEARLY THESE PROJECTS INVOLVE SOPHISTICATED ENGINEERING PROBLEMS AND THE USE OF HEAVY EQUIPMENT IN ORDER TO BE ECONOMICALLY FEASIBLE. ON THE OTHER HAND THE ENGINEERING PROBLEMS ARE OBVIOUSLY SIMILAR TO THOSE INVOLVED IN THE CONSTRUCTION TECHNIQUE OF TUNNELLING. INDEED, WE WOULD BE LOATHE TO SAY THAT TUNNELLING PROJECTS SHOULD BE DIVIDED ON THE BASIS OF WHETHER THEY ARE DONE BY TUNNELLING PROPER OR BY THE CUT AND COVER METHOD. INDEED, THE APPLICANT AND THE RESPONDENT AGREED THAT THIS WOULD BE UNDESIRABLE.

22. SINCE IT IS CLEAR THAT SUBWAYS ARE TUNNELLING PROJECTS WE CAN SEE NO REASON WHY THESE PROJECTS SHOULD FALL IN ANY OTHER SECTOR, BUT THE SEWERS, TUNNELS AND WATERMAINS SECTOR WHICH IS SPECIFICALLY ENUMERATED IN SECTION 106(e). THE FACT THAT THESE TUNNELS HAVE A SPECIFIC PURPOSE IS NOT SUFFICIENT TO DISTINGUISH THESE TUNNELS FROM OTHER TUNNEL PROJECTS SINCE MOST TUNNELS HAVE A SPECIFIC PURPOSE IN ANY EVENT. THUS, IT IS CLEAR THAT THE BOARD CANNOT ALLOW THIS PART OF THE CLARITY NOTE PROPOSED BY THE APPLICANT AND THE RESPONDENT. ALTHOUGH IT IS CLEAR THAT THE BOARD CANNOT ALLOW ANY OF THE CLARITY NOTE SUGGESTED BY BOTH THE APPLICANT AND THE RESPONDENT IT IS NEVERTHELESS CLEAR THAT THE APPROPRIATE SECTOR FOR ACCREDITATION IN THE PRESENT CASE IS THE HEAVY ENGINEERING SECTOR OF THE CONSTRUCTION INDUSTRY. THE BOARD THEREFORE FINDS THAT THE APPROPRIATE SECTOR FOR ACCREDITATION IN THIS APPLICATION IS THE HEAVY ENGINEERING SECTOR OF THE CONSTRUCTION INDUSTRY. AS NOTED IN PARAGRAPH 6 THE GEOGRAPHIC AREA CLAIMED AS APPROPRIATE IN THE PRESENT APPLICATION IS THE STANDARD AREA FOR COLLECTIVE AGREEMENTS FOR THE TORONTO AREA. THE BOARD THEREFORE FINDS THAT THE GEOGRAPHIC AREA PROPOSED BY THE APPLICANT

AND THE RESPONDENT IS THE APPROPRIATE GEOGRAPHIC AREA FOR ACCREDITATION IN THE PRESENT APPLICATION. IN VIEW OF THE ABOVE CONSIDERATIONS AND ON THE BASIS OF ALL THE EVIDENCE BEFORE THE BOARD THE BOARD FURTHER FINDS THAT ALL EMPLOYERS OF EMPLOYEES FOR WHOM THE RESPONDENT HAS BARGAINING RIGHTS IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK, THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING, THE TOWNS OF OAKVILLE AND MILTON AND THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, IN THE HEAVY ENGINEERING SECTOR OF THE CONSTRUCTION INDUSTRY CONSTITUTE A UNIT OF EMPLOYERS APPROPRIATE FOR COLLECTIVE BARGAINING.

23. IN ACCORDANCE WITH THE BOARD'S RULES OF PROCEDURE NOTICE OF THIS APPLICATION WAS SERVED ON TWENTY-FOUR EMPLOYERS NAMED ON THE REVISED SCHEDULE OF EMPLOYERS ARISING OUT OF THE CONSULTATION BY THE PARTIES WITH THE BOARD'S EXAMINER. EMPLOYER INTERVENTIONS WERE RECEIVED OR EMPLOYERS WERE CONTACTED IN ALL BUT TWO INSTANCES. THESE EMPLOYERS, CIRO COSTA MASONRY AND PACIFIC DEWATERING LIMITED WERE REMOVED FROM THE LIST OF EMPLOYERS BY THE APPLICANT AND THE RESPONDENT AT THE HEARING. ONE OTHER EMPLOYER WAS AGREED BY THE APPLICANT AND THE RESPONDENT AS IN THE LIST OF EMPLOYERS. ONE EMPLOYER FAILED TO FILE AN EMPLOYER INTERVENTION IN FORM 68, BUT FILED A LETTER SAYING THAT THE EMPLOYER HAD BEEN OUT OF BUSINESS SINCE JULY 1971. THE APPLICANT AND THE RESPONDENT AT THE HEARING TOOK THE POSITION THAT THE RESPONDENT WAS ENTITLED TO BARGAIN ON BEHALF OF THE EMPLOYEES OF THIS EMPLOYER AND IN THE ABSENCE OF A PROPER FILING THE BOARD IS PREPARED TO ACCEPT THE AGREEMENT OF THE PARTIES THAT THIS EMPLOYER IS IN THE UNIT OF EMPLOYERS. ACCORDINGLY REDFERN CONSTRUCTION COMPANY LIMITED WILL BE INCLUDED IN THE UNIT OF EMPLOYERS. HOWEVER, IT WILL BE PLACED ON FINAL SCHEDULE "F".

24. ONE OF THE EMPLOYERS THAT MADE A FILING, OTACO INDUSTRIES LTD., FORMERLY LEEDS RICHARDSON CO. LTD., STATED IN ITS EMPLOYER INTERVENTION THAT THE RESPONDENT WAS NOT ENTITLED TO BARGAIN ON BEHALF OF ITS EMPLOYEES. THIS STATEMENT WAS CHALLENGED BY THE APPLICANT AND THE RESPONDENT AT THE HEARING. HOWEVER, NO EVIDENCE WAS PRESENTED TO THE BOARD TO CONTRADICT THE CLAIM MADE BY THE INDIVIDUAL EMPLOYER. IN SUCH INSTANCES THE BOARD'S USUAL PRACTICE HAS BEEN TO ACCEPT THE REPRESENTATIONS OF THE EMPLOYER AND ACCORDINGLY LEEDS RICHARDSON CO. LTD. IS REMOVED FROM THE LIST OF EMPLOYERS IN THE UNIT OF EMPLOYERS.

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3035-72-U: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA,  
LOCAL 2679 (COMPLAINANT) v. REFF PRODUCTS LIMITED (RESPONDENT).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN AND BOARD MEMBERS P. J. O'KEEFFE AND J. E. C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: HAROLD F. CALEY AND R. BRANDT FOR THE APPLICANT; JOHN P. SANDERSON AND ROBERT ZOEBELEIN FOR THE RESPONDENT.



## DECISION OF THE BOARD:

MAY 8, 1973.

1. THIS IS A COMPLAINT FILED UNDER THE PROVISIONS OF SECTION 79 OF THE LABOUR RELATIONS ACT, WHEREIN THE COMPLAINANT ALLEGES THAT THE AGGRIEVED PERSONS, H. LEACOCK, J. HOLLAND AND A. KYPRIANOU WERE DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 58(A) OF THE SAID ACT.
2. THE EVIDENCE DISCLOSES THAT THE COMPLAINANT WAS CERTIFIED ON SEPTEMBER 18, 1972 (BOARD FILE NO. 2458-72-R), TO REPRESENT CERTAIN EMPLOYEES OF THE RESPONDENT AT ITS MANUFACTURING PLANTS IN METROPOLITAN TORONTO. FOLLOWING THE ELECTION OF THE THREE ABOVE-NAMED AGGRIEVED PERSONS, WHO WERE ALL EMPLOYED BY THE RESPONDENT AS CABINET MAKERS, TO THE BARGAINING COMMITTEE, TWO NEGOTIATION MEETINGS WERE HELD WITH THE RESPONDENT. HOWEVER, THE PARTIES WERE UNSUCCESSFUL IN CONCLUDING A COLLECTIVE AGREEMENT. THE INTERVENTION OF A CONCILIATION OFFICER FAILED TO RESOLVE ALL OF THE OUTSTANDING ISSUES BETWEEN THE PARTIES AND ON FEBRUARY 5, 1973, A "NO BOARD" REPORT WAS ISSUED.
3. THE RESPONDENT, A FURNITURE MANUFACTURER, INITIALLY COMMENCED OPERATIONS IN 1963 AT PREMISES SITUATE AT 97 MILVAN DRIVE, AND FOR APPROXIMATELY TWO YEARS WAS EXCLUSIVELY ENGAGED IN THE PRODUCTION OF "OLD SHELVING" OR "OLD LINE" ITEMS OF FURNITURE UNDER A MANUFACTURING PROCESS TO WHICH WE SHALL REFER TO AS THE OLD SYSTEM. HOWEVER, SOMETIME IN 1965, THE RESPONDENT BEGAN TO FORMULATE PLANS TO DEVELOP ANOTHER TYPE OF FURNITURE, HEREINAFTER REFERRED TO AS "NEW LINE" ITEMS, WHICH INVOLVED A MORE MECHANIZED SYSTEM OF PRODUCTION. THIS SYSTEM, TO WHICH WE SHALL REFER TO AS THE NEW SYSTEM, REQUIRED FEWER EMPLOYEES AND FEWER SKILLS THAN WAS THE CASE WITH THE OLD SYSTEM. DURING THE LATTER PART OF 1969, AS ANTICIPATED, SALES OF THE "OLD LINE" ITEMS OF FURNITURE APPEARED TO HAVE REACHED THEIR PEAK AND FROM THAT TIME ONWARD, THEY BEGAN TO DECLINE. IT WAS AT THIS POINT THAT THE RESPONDENT COMMENCED TO GRADUALLY INTRODUCE INTO ITS OPERATIONS, THE ACTUAL MANUFACTURE OF ITS "NEW LINE" ITEMS OF FURNITURE.
4. BY LETTER DATED APRIL 30, 1971, THE RESPONDENT ADVISED ITS CUSTOMERS OF THE DISCONTINUANCE, EFFECTIVE JULY 1, 1971, OF CERTAIN OF ITS "OLD LINE" ITEMS OF FURNITURE. THEY WERE PREVIOUSLY ADVISED OF AN INITIAL DISCONTINUANCE EFFECTIVE OCTOBER 15, 1970. IT IS CLEAR THAT AS OF JULY 1, 1971, THERE WAS A FIFTY PER CENT REDUCTION IN THE MANUFACTURE UNDER THE OLD SYSTEM. A FURTHER TEN PER CENT REDUCTION BECAME EFFECTIVE OCTOBER 1, 1971 AND THE CUSTOMERS WERE SO ADVISED BY LETTER DATED AUGUST 31, 1971. THE REMAINING FORTY PER CENT OF THE ITEMS PRODUCED UNDER THE OLD SYSTEM WAS FINALLY DISCONTINUED AS OF DECEMBER 1, 1972 AND THE CUSTOMERS WERE SO ADVISED BY LETTER DATED SEPTEMBER 1, 1972. DURING THIS PERIOD OF PHASING OUT THE "OLD LINE", THE RESPONDENT WAS SIMULTANEOUSLY TRANSFERRING A NUMBER OF ITS EMPLOYEES INTO THE NEW SYSTEM. IT IS CLEAR ON THE EVIDENCE THAT THESE MANAGEMENT ACTIVITIES WERE IN DIRECT RESPONSE TO THE DECLINING SALES IN THE "OLD LINE" ITEMS AS COMPARED WITH THE CORRESPONDINGLY INCREASE IN SALES OF THE "NEW LINE" ITEMS. HOWEVER, ALTHOUGH REMOIRS OF

THE IMPENDING PHASE-OUT OF THE OLD SYSTEM HAD CIRCULATED AMONGST THE EMPLOYEES, THE RESPONDENT DID NOT SPECIFICALLY ADVISE THE BARGAINING COMMITTEE, ALTHOUGH A FINAL DECISION IN THIS RESPECT WAS MADE AS EARLY AS JUNE OF 1972.

5. ON DECEMBER 15, 1972, ROBERT ZOEBELEIN, THE RESPONDENT'S GENERAL MANAGER, CAUSED TO BE DELIVERED TO TWELVE EMPLOYEES (WHICH INCLUDED THE THREE AGGRIEVED PERSONS) SHORTLY PRIOR TO THEIR RESPECTIVE QUITTING TIMES, INDIVIDUAL NOTICES WHICH, ASIDE FROM VARIOUS ADJUSTMENTS MADE PURSUANT TO THE EMPLOYMENT STANDARDS ACT, WERE WORDED IN IDENTICAL LANGUAGE AND PROVIDED AS FOLLOWS:

"REFF PRODUCTS DISCONTINUES THE MANUFACTURE OF THEIR PRODUCT LINE "OLD SHELVING".

WE REGRET TO INFORM YOU THAT FOR THIS REASON YOUR WORK WITH OUR COMPANY CEASES AS OF TODAY, DECEMBER 15, 1972.

ACCORDING TO YOUR EMPLOYMENT RECORDS WITH OUR COMPANY YOU ARE ENTITLED TO ONE WEEK NOTICE. IN ORDER TO GIVE YOU A BETTER OPPORTUNITY TO LOOK FOR ANOTHER JOB YOU ARE, STARTING NEXT MONDAY, DECEMBER 18, 1972, NO LONGER REQUIRED TO REPORT FOR WORK, BUT WILL BE PAID FOR THE PERIOD OF NOTICE YOU ARE ENTITLED TO."

6. THE EVIDENCE FURTHER DISCLOSES THAT, AT ALL RELEVANT TIMES, THESE TWELVE EMPLOYEES ARE INCLUDED IN A GROUP OF FOURTEEN EMPLOYEES WHO WERE ENGAGED IN THE PRODUCTION OF "OLD LINE" ITEMS OF FURNITURE PURSUANT TO THE RESPONDENT'S OLD SYSTEM. THE REMAINING TWO EMPLOYEES, NAMELY, A FEMALE HELPER AND A CABINET MAKER, BOTH OF WHOM HAD PREVIOUS EXPERIENCE UNDER THE NEW SYSTEM, WERE RETAINED BY THE RESPONDENT, INTER ALIA, TO FILL ANY CUSTOMER ORDERS FROM EXISTING STOCK OF "OLD LINE" ITEMS WHICH HAD NOT AS YET BEEN DEPLETED. IN JANUARY OF 1973, WHEN THIS PORTION OF THE OPERATION WAS DISCONTINUED, THE FEMALE HELPER'S EMPLOYMENT WITH THE RESPONDENT WAS LIKEWISE TERMINATED AND THE CABINET MAKER HAD SUBSEQUENTLY QUIT. SINCE DECEMBER 15, 1972, THE RESPONDENT HAS HIRED THREE HELPERS AND ONE MECHANIC UNDER THE NEW SYSTEM. AS THE OLD SYSTEM OF MANUFACTURE HAD CEASED AS OF THE TIME OF THE QUITTING BY THE AFOREMENTIONED CABINET MAKER, THERE WAS NO NEED TO REPLACE HIM SINCE HIS ACTIVITIES WERE AT THAT POINT TRANSFERRED TO AN EMPLOYEE ENGAGED UNDER THE NEW SYSTEM.

7. HAVING CAREFULLY REVIEWED THE TOTALITY OF THE EVIDENCE AS ADDUCED, WE ARE SATISFIED THAT THE RESPONDENT'S DECISION TO TERMINATE THE EMPLOYMENT OF THE THREE AGGRIEVED PERSONS IN THE MANNER AS SET OUT ABOVE, WAS BASED UPON AND FLOWED FROM ITS INITIAL POLICY DECISION TO CONVERT ITS OPERATIONS FROM THE OLD SYSTEM TO THE NEW SYSTEM OF MANUFACTURING. PUT ANOTHER WAY, WE ARE SATISFIED THAT THE EMPLOYMENT OF THE AGGRIEVED PERSONS WAS DIS-

CONTINUED BECAUSE THEIR JOBS HAD BEEN DISCONTINUED AND NOT FOR REASONS ASSOCIATED WITH ANY UNION ACTIVITY ON THEIR PART.

8. ACCORDINGLY, WE FIND THAT THE COMPLAINANT HAS NOT DISCHARGED THE ONUS RESTING UPON IT TO ESTABLISH THAT THE AGGRIEVED PERSONS HAD BEEN DEALT WITH BY THE RESPONDENT CONTRARY TO THE LABOUR RELATIONS ACT AND PROCEEDINGS IN THIS REGARD ARE THEREFORE DISMISSED.

3321-72-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. ELGIN MOTORS COMPANY LIMITED (RESPONDENT) V. ELGIN MOTORS MECHANICS INDEPENDENT ASSOCIATION (PREDECESSOR TRADE UNION).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS P. J. O'KEEFFE AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: L. INGLE AND O. GRASSO APPEARING FOR THE APPLICANT; W. GIBSON GRAY, Q.C., JACK GRAY AND L. MCFADDEN APPEARING FOR THE RESPONDENT; AND STEVEN PLIAKES APPEARING FOR THE PREDECESSOR TRADE UNION.

DECISION OF THE BOARD: MAY 9, 1973.

1. THIS IS AN APPLICATION UNDER THE PROVISION OF SECTION 54 OF THE LABOUR RELATIONS ACT FOR A DECLARATION THAT THE APPLICANT IS THE SUCCESSOR OF THE ELGIN MOTORS MECHANICS INDEPENDENT ASSOCIATION (HEREINAFTER REFERRED TO AS THE "ASSOCIATION").

2. THE EVIDENCE DISCLOSES THAT THE RESPONDENT, COMMENCING IN 1964, HAS VOLUNTARILY RECOGNIZED THE ASSOCIATION AS THE SOLE AND EXCLUSIVE BARGAINING AGENT FOR CERTAIN OF ITS EMPLOYEES AS EVIDENCED THROUGH A SUCCESSIVE SERIES OF PURPORTED COLLECTIVE AGREEMENTS RUNNING FOR A TERM OF TWO YEARS RESPECTIVELY. IT IS TO BE NOTED THAT ONE OF THESE AGREEMENTS HAD BEEN ONLY CONCLUDED AFTER THE INTERVENTION AND ASSISTANCE OF A CONCILIATION OFFICER. AS OF THE DATE OF THE FILING OF THIS APPLICATION ON FEBRUARY 21, 1973, THERE IS A CURRENT PURPORTED COLLECTIVE AGREEMENT IN EFFECT BETWEEN THESE PARTIES WHICH, SUBJECT TO RENEWAL, IS TO RUN FROM JANUARY 3, 1972 UNTIL DECEMBER 31, 1973. HOWEVER, THE EVIDENCE FURTHER DISCLOSES THAT AT NO TIME DID THE ASSOCIATION ADOPT A CONSTITUTION OR BY-LAWS.

3. IN THE GULF OIL CANADA LIMITED CASE OLRB MONTHLY REPORT, FEBRUARY 1970, P. 1380, THE BOARD UPON AN APPLICATION FOR A DECLARATION OF SUCCESSOR RIGHTS (FORMERLY SECTION 47 OF THE SAID ACT), WAS SIMILARLY MET WITH THE SITUATION WHERE AN ASSOCIATION HAD NO CONSTITUTION NOR BY-LAWS. IN THAT CASE, THE BOARD AT PAGE 1381, STATED:

"BEFORE AN ORGANIZATION CAN OBTAIN RECOGNITION AS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) [NOW 1(1)(N)] OF THE LABOUR RELATIONS



ACT, IT MUST BE ESTABLISHED THAT THE ORGANIZATION IS A VIABLE ENTITY WHICH HAS A CONSTITUTION, BY-LAWS, CHARTER OR OTHER DOCUMENTARY EVIDENCE WHICH WOULD ESTABLISH ITS EXISTENCE AS A VIABLE ENTITY AND WHICH PROSPECTIVE MEMBERS COULD INSPECT IN ORDER TO DETERMINE WHETHER OR NOT THE ORGANIZATION IS ONE WHICH SUCH PROSPECTIVE MEMBERS WOULD WISH TO JOIN.

FOR THE REASONS GIVEN BY THE BOARD IN THE BROCKVILLE, CHEMICALS LIMITED CASE, OLRB MONTHLY REPORT, JULY 1961, P. 134; ALCAN UNIVERSAL HOMES DIVISION OF ALCAN DESIGN HOMES LIMITED CASE, OLRB MONTHLY REPORT, APRIL 1969, P. 55, AND THE DRUMMOND TRANSIT COMPANY CASE, OLRB MONTHLY REPORT, FEBRUARY 1959, P. 31, THE BOARD MUST FIND THAT IN THE ABSENCE OF THE EXISTENCE OF A CONSTITUTION OR OTHER DOCUMENTARY EVIDENCE WHICH WOULD ESTABLISH THAT THE GULF OIL CANADA LIMITED, CLARKSON BARGAINING ASSOCIATION IS A VIABLE ENTITY, THE BOARD MUST THEREFORE FIND THAT AS OF THE DATE OF THE FILING OF THIS APPLICATION THE GULF OIL CANADA LIMITED, CLARKSON BARGAINING ASSOCIATION WAS NOT A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) [NOW S1(1)(N)] OF THE LABOUR RELATIONS ACT. SINCE THERE WAS NO PREDECESSOR TRADE UNION, THERE IS NOTHING TO WHICH THE APPLICANT COULD SUCCEED UNDER THE PROVISIONS OF SECTION 47 [NOW SECTION 54] OF THE LABOUR RELATIONS ACT."

4. HAVING CAREFULLY REVIEWED THE TOTALITY OF THE EVIDENCE AS ADDUCED AT THE HEARING OF THIS MATTER ON APRIL 3, 1973, AND APPLYING THE PRINCIPLES AS SET OUT ABOVE, THE BOARD FINDS THAT THE ASSOCIATION, IN THE ABSENCE OF A CONSTITUTION, BY-LAWS, OR OTHER DOCUMENTARY EVIDENCE ESTABLISHING ITS EXISTENCE AS A VIABLE ENTITY, IS MERELY AN INFORMAL ASSOCIATION AND NOT THE TYPE OF FORMAL ORGANIZATION CONTEMPLATED IN THE DEFINITION OF A TRADE UNION APPEARING IN SECTION 1(1)(N) OF THE SAID ACT.

5. IN THE RESULT, WE FIND THAT THE ASSOCIATION IS NOT A TRADE UNION WITHIN THE MEANING OF THE SAID ACT AND SINCE THERE WAS THEREFORE NO PREDECESSOR TRADE UNION, THERE IS NOTHING TO WHICH THE APPLICANT CAN SUCCEED UNDER THE PROVISIONS OF SECTION 54 OF THE SAID ACT. PROCEEDINGS IN THIS REGARD ARE ACCORDINGLY DISMISSED.

3653-73-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE REGIONAL MUNICIPALITY OF NIAGARA, HOMES FOR SENIOR CITIZENS (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND O. HODGES.

DECISION OF THE BOARD:

MAY 14, 1973.

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5. THE RESPONDENT REQUESTED THAT EMPLOYEES EMPLOYED ON A WINTER WORKS PROGRAM BE EXCLUDED FROM THE BARGAINING UNIT BECAUSE THEY WERE HIRED FOR A SPECIFIC LENGTH OF TIME AND THEIR EMPLOYMENT WILL SOON BE TERMINATED. THERE IS NOTHING IN THE LABOUR RELATIONS ACT WHICH WOULD JUSTIFY THE EXCLUSION OF EMPLOYEES HIRED AS PART OF THE WINTER WORKS PROGRAM OR ANY OTHER GOVERNMENT EMPLOYMENT PROGRAM. ALTHOUGH SUCH EMPLOYEES MAY ONLY BE EMPLOYED FOR A RELATIVELY SHORT AND SPECIFIC PERIOD OF TIME THEY ARE EMPLOYEES FOR THE PURPOSES OF THE ACT AND ACCORDINGLY ARE ENTITLED TO ANY BENEFITS WHICH FLOW FROM THE ACT. THE BOARD THEREFORE IS NOT PREPARED TO EXCLUDE THE THREE PERSONS WHO WERE HIRED BY THE RESPONDENT AS PART OF THE WINTER WORKS PROGRAM. THE RESPONDENT ALSO REQUESTED THE BOARD TO EXCLUDE "STUDENTS EMPLOYED WHO ARE ATTENDING SCHOOL". ALTHOUGH THE PARTIES MAY, DURING THE COURSE OF BARGAINING, AGREE TO EXCLUDE "STUDENTS EMPLOYED WHO ARE ATTENDING SCHOOL", THE BOARD IS NOT PREPARED TO DEPART FROM ITS USUAL DESCRIPTION OF STUDENTS AND ACCORDINGLY THE BOARD, IN ACCORDANCE WITH ITS USUAL PRACTICE, HAS EXCLUDED STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD.

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3216-72-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. THE PRESTOLITE COMPANY, DIVISION OF ELTRA OF CANADA LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS P. J. O'KEEFE AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: ROBERT WHITE AND CARL ANDERSON FOR THE APPLICANT; A. J. CLARK, Q.C., G. N. WATSON AND R. BALLINGER FOR THE RESPONDENT.

DECISION OF THE BOARD:

MAY 14, 1973.

1. THE RESPONDENT OBJECTED TO THE PRESENCE OF JOHN DENNIS AS A REPRESENTATIVE OF THE APPLICANT AT THE EXAMINER'S HEARING IN THIS MATTER. BY LETTER DATED MAY 7, 1973 THE RESPONDENT HAS SET OUT THE REASONS FOR ITS OBJECTIONS AS FOLLOWS:

(1) MR. DENNIS IS CHAIRMAN OF THE EXECUTIVE SHOP COMMITTEE, A POSITION PROVIDED IN THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE PRESTOLITE UNIT OF LOCAL 456, INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, AND IS AN EMPLOYEE OF THE COMPANY, COVERED BY THE AFORESAID COLLECTIVE AGREEMENT. THE RESPONDENT

SUBMITS THAT BECAUSE MR. DENNIS IS A MEMBER OF A SEPARATE BARGAINING UNIT, HE HAD NO RIGHT TO PARTICIPATE IN THIS EXAMINER'S HEARING IN CONNECTION WITH AN APPLICATION FOR CERTIFICATION COVERING A DIFFERENT BARGAINING UNIT.

(2) MR. DENNIS IS A MEMBER OF THE PRESTOLITE UNIT OF THE AFORESAID LOCAL 456 BUT IT HAS NOT BEEN CLAIMED THAT HE IS A MEMBER OF THE APPLICANT HEREIN OR THAT HE HOLDS ANY POSITION OR OFFICE IN THE APPLICANT UNION. SINCE HE IS NOT A MEMBER OF THE APPLICANT UNION, HE THEREFORE HAS NO RIGHT TO PARTICIPATE IN THE HEARINGS.

(3) UNDER THE AFORESAID COLLECTIVE AGREEMENT, THE CHAIRMAN OF THE EXECUTIVE SHOP COMMITTEE HAS NO RIGHT TO A TEMPORARY LEAVE OF ABSENCE TO ATTEND TO UNION BUSINESS OTHER THAN BUSINESS INVOLVING THE PRESTOLITE UNIT OF THE SAID LOCAL 456.

2. THE CHOICE OF THE REPRESENTATIVES OF A UNION IN ANY PROCEEDING BEFORE THE BOARD IS A MATTER WITHIN THE SOLE DISCRETION OF THE UNION AND THE BOARD WILL ACCORDINGLY NOT INTERFERE WITH THE CHOICE OF REPRESENTATIVES OR SPOKESMEN ON THE PART OF THE UNION OR ANY OTHER PARTY. HOWEVER, THE MATTER REFERRED TO IN ITEM 3 OF THE RESPONDENT'S LETTER IS A MATTER WHICH WILL HAVE TO BE DEALT WITH BY THE PARTIES PURSUANT TO THE PROVISIONS OF THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND LOCAL 456 AND THE BOARD EXPRESSES NO VIEWS WITH RESPECT TO THAT ISSUE.

3706-73-U: D. R. CRAWFORD CONSTRUCTION LIMITED (APPLICANT) V. ESSEX AND KENT COUNTIES BUILDING TRADES COUNCIL, PATRICK DOYLE, TOM GALLANT, RAY PATERSON AND MURRAY WHELPTON (RESPONDENTS).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS A. MAIN AND F. W. MURRAY.

APPEARANCES AT THE HEARING: R. A. WERRY, B. R. BALDWIN AND D. R. CRAWFORD FOR THE APPLICANT; GARY P. RODRIGUES AND W. CONLIN FOR THE RESPONDENTS.

DECISION OF THE BOARD: MAY 14, 1973.

1. THIS IS AN APPLICATION FOR A DECLARATION UNDER SECTION 123 OF THE LABOUR RELATIONS ACT.

2. THE EVIDENCE ESTABLISHED THAT THE RESPONDENTS SET UP AND PARTICIPATED IN AN INFORMATIONAL PICKET LINE AT THE APPLICANT'S JOB SITE IN LEAMINGTON FROM AND AFTER TUESDAY, APRIL 24, 1973. THE PICKET LINE WAS FOR THE PURPOSE OF INFORMING ALL INTERESTED PERSONS AND PARTICULARLY



EMPLOYEES ENGAGED ON THE JOB SITE BY THE APPLICANT OR SUBCONTRACTORS THAT THE APPLICANT WAS A NON-UNION CONTRACTOR. THE PURPOSE OF THE PICKET LINE WAS TO OBTAIN THE SUPPORT OF TRADE UNIONISTS WHOM THE RESPONDENTS HOPED WOULD, IN ACCORDANCE WITH RECOGNIZED TRADE UNION PRACTICE, RESPECT THE PICKET LINE BY REFUSING TO CROSS IT.

3. AS A RESULT OF THE PICKET LINE EMPLOYEES OF NADROFSKY STEEL ERECTING LTD., ONE OF THE SUBCONTRACTORS ON THE LEAMINGTON PROJECT, REFUSED TO CROSS THE PICKET LINE AND THEREBY ENGAGED IN AN UNLAWFUL STRIKE CONTRARY TO THE PROVISIONS OF THE LABOUR RELATIONS ACT IN LIGHT OF THE PROVISIONS OF A SUBSISTING COLLECTIVE AGREEMENT BETWEEN NADROFSKY STEEL ERECTING LTD. AND THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 AND THE PROVISIONS OF A COLLECTIVE AGREEMENT BETWEEN NADROFSKY STEEL ERECTING LTD. AND THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNIONS 700, 721, 736, 765 AND 786. IT IS READILY APPARENT FROM THE EVIDENCE BEFORE US THAT THE REFUSAL OF THE IRONWORKERS AND THE OPERATING ENGINEERS TO CROSS THE PICKET WAS THE RESULT DESIRED BY THE RESPONDENTS IN ORDER TO GIVE EFFECT TO THEIR EFFORTS TO BRING PRESSURE UPON THE APPLICANT TO ENTER INTO A COLLECTIVE AGREEMENT WITH MEMBERS OF THE ESSEX AND KENT COUNTIES BUILDING TRADES COUNCIL.

4. THE BOARD THEREFORE FINDS THAT THE ESSEX AND KENT COUNTIES BUILDING TRADES COUNCIL AUTHORIZED AN UNLAWFUL STRIKE AND THAT PATRICK DOYLE, TOM GALLANT, RAY PATERSON AND MURRAY WHELPTON, BEING OFFICERS, OFFICIALS OR AGENTS OF THE ESSEX AND KENT COUNTIES BUILDING TRADES COUNCIL, COUNSELLED OR PROCURED OR SUPPORTED OR ENCOURAGED AN UNLAWFUL STRIKE BY THE EMPLOYEES OF NADROFSKY STEEL ERECTING LTD. CONTRARY TO THE PROVISIONS OF SECTION 123 OF THE LABOUR RELATIONS ACT.

5. THE BOARD THEREFORE DIRECTS THAT THE RESPONDENTS DISCONTINUE THEIR PICKET LINE AT THE APPLICANT'S LEAMINGTON PROJECT FORTHWITH, UNLESS AND UNTIL SUCH TIME AS THE EMPLOYEES MAY BE LEGALLY ENTITLED TO STRIKE, AND TO CEASE AND DESIST FROM ANY OTHER ACTIVITIES WHICH IN ANY WAY SUPPORT OR ENCOURAGE AN UNLAWFUL STRIKE BY THE EMPLOYEES OF NADROFSKY STEEL ERECTING LTD. AT THE APPLICANT'S LEAMINGTON PROJECT.

3436-72-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE TOWN OF OAKVILLE (RESPONDENT).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS H.J.F. ADE AND E. BOYER.

APPEARANCES AT THE HEARING: W. A. ACTON AND A. BLANCHET FOR THE APPLICANT; DENNIS M. CAMM AND HUGH FEENSTRA FOR THE RESPONDENT.

DECISION OF THE BOARD: MAY 14, 1973.

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2. THE APPLICANT IS SEEKING CERTIFICATION ON BEHALF OF A UNIT OF EMPLOYEES EMPLOYED IN THE RESPONDENT'S PUBLIC TRANSPORTATION DEPARTMENT. THE PARTIES ARE APART ON THE INCLUSION IN THE BARGAINING UNIT OR EXCLUSION FROM THE BARGAINING UNIT OF CERTAIN CATEGORIES OF EMPLOYEES.
3. THE APPLICANT PROPOSES THE INCLUSION OF OFFICE STAFF, WHILE THE RESPONDENT PROPOSES THE EXCLUSION OF OFFICE STAFF. THE OFFICE STAFF CONSISTS OF ONE OFFICE CLERK (OTHER THAN A CONFIDENTIAL SECRETARY TO THE TRANSPORTATION MANAGER - WHOSE SECRETARY IS AN AGREED EXCLUSION FROM THE BARGAINING UNIT). THE RESPONDENT PROPOSES THE EXCLUSION OF "PART-TIME" EMPLOYEES, WHILE THE APPLICANT DOES NOT AGREE TO SUCH AN EXCLUSION. THE RESPONDENT ALSO PROPOSES THE EXCLUSION OF STUDENTS EMPLOYED ON A CO-OPERATIVE TRAINING PROGRAMME, WHILE THE APPLICANT OPPOSES SUCH AN EXCLUSION. THE PARTIES AGREE TO THE EXCLUSION OF STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD.
4. THE PARTIES AGREED THAT THE RESPONDENT NEITHER PRESENTLY EMPLOYS NOR HAS A HISTORY OF EMPLOYING EITHER "PART-TIME" EMPLOYEES OR PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK. IN THESE CIRCUMSTANCES, THE BOARD FINDS NO REASON TO EXCLUDE EITHER "PART-TIME" EMPLOYEES OR PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK FROM THE PROPOSED BARGAINING UNIT.
5. WHILE THE RESPONDENT DOES EMPLOY STUDENTS, SUCH STUDENTS ARE NOT EMPLOYED ON A FORMAL CO-OPERATIVE TRAINING PROGRAMME. HOWEVER, SUCH STUDENTS ARE EMPLOYED FULL-TIME BY THE RESPONDENT FOR SHORT PERIODS OF TIME UP TO TWO WEEKS AS AN ADJUNCT TO THEIR STUDIES IN TRANSPORTATION AT SHERIDAN COLLEGE. IT IS THE INTENTION OF THE RESPONDENT AND SHERIDAN COLLEGE TO DEVELOP THE EMPLOYMENT OF THESE STUDENTS AS A PART OF THEIR CURRICULUM IN A FORMAL PROGRAMME. IN THESE CIRCUMSTANCES, THE BOARD FINDS THAT THESE STUDENTS DO NOT SHARE A COMMUNITY OF INTEREST WITH THE OTHER EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT DEFINED IN PARAGRAPH EIGHT HEREIN AND THAT THEY ARE ACCORDINGLY EXCLUDED FROM THE BARGAINING UNIT.
6. IT IS THE BOARD'S USUAL PRACTICE TO PLACE OFFICE EMPLOYEES IN A BARGAINING UNIT SEPARATE AND APART FROM OTHER EMPLOYEES, SAVE IN THE MOST EXCEPTIONAL CIRCUMSTANCES. ONE OF THE EXCEPTIONAL CIRCUMSTANCES WHICH HAS CAUSED THE BOARD TO DEPART FROM ITS USUAL PRACTICE IS THE SITUATION WHERE THERE IS ONLY ONE EMPLOYEE EMPLOYED IN AN OFFICE WHO WOULD BE ELIGIBLE FOR COLLECTIVE BARGAINING AND WHO IS CLAIMED BY THE APPLICANT AS A MEMBER. IN SUCH CIRCUMSTANCES, THE BOARD HAS INCLUDED SUCH AN OFFICE EMPLOYEE IN THE SAME BARGAINING UNIT AS OTHER EMPLOYEES BECAUSE THE SOLE OFFICE EMPLOYEE, WHO WOULD BE ELIGIBLE FOR COLLECTIVE BARGAINING, WOULD OTHERWISE BE DEPRIVED OF THE RIGHT TO PARTICIPATE IN COLLECTIVE BARGAINING WHICH SUCH PERSON HAS INDICATED HE OR SHE DESIRES. REFERENCE IS MADE TO THE H. GRAY LIMITED CASE, 55 CLLC ¶18,011 AND TO THE P. F. COLLIER & SON LIMITED CASE, OLRB REP. SEPTEMBER 1966, P. 408.
7. HOWEVER, IN THE INSTANT CASE, THE OFFICE EMPLOYEE WHO WOULD BE

ELIGIBLE FOR COLLECTIVE BARGAINING, LINDA SNOYER, IS NOT CLAIMED BY THE APPLICANT AS A MEMBER AND THEREFORE, IN OUR OPINION, WOULD NOT CONSTITUTE ONE OF THE EXCEPTIONAL CIRCUMSTANCES REFERRED TO BY THE BOARD IN THE H. GRAY LIMITED CASE, SUPRA. THE BOARD THEREFORE FINDS THAT IT WOULD NOT BE APPROPRIATE TO INCLUDE OFFICE STAFF IN THE APPROPRIATE BARGAINING UNIT.

6. HAVING REGARD TO THE FOREGOING, THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT OAKVILLE EMPLOYED IN ITS PUBLIC TRANSPORTATION DEPARTMENT, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, TRANSPORTATION MANAGER, OFFICE STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND STUDENTS EMPLOYED ON A CO-OPERATIVE PROGRAMME, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

9. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN SIXTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON MARCH 21, 1973, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92 (2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

10. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

3622-73-R: CANADIAN FOOD AND ALLIED WORKERS LOCAL UNION 175, CHARTERED BY THE AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA (APPLICANT) v. NATIONAL GROCERS COMPANY LIMITED, OPERATING AS BUTCHER BOY OK ECONOMY MARKETS (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS P. J. O'KEEFFE AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: J. A. RYDER AND L. DOWLING FOR THE APPLICANT; E. T. McDERMOTT FOR THE RESPONDENT; R. E. YOUNG FOR THE OBJECTORS.

DECISION OF THE BOARD: MAY 15, 1973.

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3. AT THE HEARING OF THE INSTANT APPLICATION ON MAY 8, 1973 COUNSEL FOR THE APPLICANT AND COUNSEL FOR THE RESPONDENT AGREED THAT THE RETAIL STORE OF THE RESPONDENT, WHICH IS THE SUBJECT OF THE APPLICATION, WAS LOCATED IN THE MUNICIPALITY OF THE VILLAGE OF LAMBETH. BY LETTER DATED MAY 10, 1973 COUNSEL FOR THE APPLICANT SUBMITTED THAT A BARGAINING UNIT DESCRIBED BY REFERENCE TO THE MUNICIPAL BOUNDARIES OF LAMBETH IS INCONSISTENT WITH THE ESTABLISHED PRACTICE OF THE BOARD IN THE RETAIL FOOD SERVICES INDUSTRY AND LOCALITY. ACCORDING TO COUNSEL THE BOARD HAS DESCRIBED SUCH UNITS IN TERMS OF THE MUNICIPAL BOUNDARIES OF THE TOWNSHIP OF WESTMINSTER. COUNSEL FOR THE RESPONDENT BY LETTER DATED MAY 11, 1973



SUBMITTED THAT THE BOARD SHOULD DEAL WITH THE ISSUE OF THE GEOGRAPHIC AREA OF THE BARGAINING UNIT ACCORDING TO ITS USUAL POLICY.

4. THE PAST PRACTICE OF THE BOARD GENERALLY HAS BEEN TO DESCRIBE THE GEOGRAPHIC AREA OF BARGAINING UNITS IN APPLICATIONS FOR CERTIFICATION, OTHER THAN APPLICATIONS RELATING TO THE CONSTRUCTION INDUSTRY, IN TERMS OF THE PARTICULAR MUNICIPALITY IN WHICH THE BUSINESS OF THE RESPONDENT EMPLOYER IS LOCATED. THE APPROPRIATE MUNICIPAL AREA MAY BE A CITY, TOWN, VILLAGE OR TOWNSHIP DEPENDING ON THE CIRCUMSTANCES OF THE INDIVIDUAL CASE. WHERE THE LOCATION OF AN EMPLOYER'S BUSINESS IS NOT IN A CITY, TOWN OR VILLAGE, THE APPROPRIATE GEOGRAPHIC AREA MAY BE THE TOWNSHIP CONCERNED. WITH REFERENCE TO THE INSTANT CASE, IF THE RETAIL STORE IN QUESTION DID NOT FALL WITHIN THE BOUNDARIES OF ANY MUNICIPALITY WITHIN THE TOWNSHIP OF WESTMINSTER, THEN THE TOWNSHIP WOULD BE THE APPROPRIATE GEOGRAPHIC AREA. THE BOARD, HOWEVER, DOES NOT HAVE A PRACTICE IN THE RETAIL FOOD SERVICES OR ANY OTHER INDUSTRY OF DESIGNATING THE TOWNSHIP OF WESTMINSTER AS THE APPROPRIATE GEOGRAPHIC AREA WHERE THE BUSINESS, PLANT OR STORE OF THE EMPLOYER FALLS WITHIN THE BOUNDARIES OF A SMALLER MUNICIPAL AREA SUCH AS, IN THE INSTANT CASE, THE VILLAGE OF LAMBETH.

5. THE BOARD ACCORDINGLY FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES IN THE VILLAGE OF LAMBETH, SAVE AND EXCEPT STORE MANAGER AND PERSONS ABOVE THE RANK OF STORE MANAGER, MEAT DEPARTMENT EMPLOYEES, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

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3022-72-R: NORTHERN ONTARIO ELECTRICAL UNION (APPLICANT) v. R. J. GLADU ELECTRIC LIMITED (RESPONDENT) v. THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION 1687 (INTERVENER).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS F. W. MURRAY AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: J. A. RYDER FOR THE APPLICANT; N. G. STONER AND R. J. GLADU FOR THE RESPONDENT; RAYMOND KOSKIE AND L. POPOVICH FOR THE INTERVENER.

DECISION OF THE BOARD: MAY 15, 1973.

1. THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION 1687 IS HEREBY ADDED AS AN INTERVENER IN THESE PROCEEDINGS.

2. BY A DECISION DATED JANUARY 30, 1973, FOLLOWING A HEARING OF THE INSTANT APPLICATION, THE BOARD FOUND THAT THE APPLICANT WAS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT. BY A CERTIFICATE OF THE SAME DATE THE BOARD CERTIFIED THE APPLICANT AS BARGAIN-

ING AGENT FOR A UNIT COMPOSED OF ALL EMPLOYEES OF THE RESPONDENT AT SUDBURY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF.

3. BY TELEGRAM DATED FEBRUARY 2, 1973, WHICH WAS SUBSEQUENTLY ELABORATED UPON BY LETTERS DATED APRIL 19 AND 23, 1973 FROM THE SOLICITORS FOR THE INTERVENER, IT WAS ALLEGED INTER ALIA THAT THE RESPONDENT WAS A PARTY TO AND BOUND BY A CURRENT COLLECTIVE AGREEMENT BETWEEN THE INTERVENER AND THE SUDBURY ELECTRICAL CONTRACTORS ASSOCIATION (HEREINAFTER REFERRED TO AS THE ASSOCIATION). COUNSEL FOR THE INTERVENER SUBMITS THAT BY REASON OF THE SAID COLLECTIVE AGREEMENT THE INSTANT APPLICATION WAS UNTIMELY AND THAT ACCORDINGLY THE BOARD SHOULD REVOKE ITS CERTIFICATE AND DISMISS THE APPLICATION.

4. THERE WAS FILED WITH THE BOARD AN UNSIGNED DOCUMENT WHICH LOU POPOVICH, THE BUSINESS AGENT OF THE INTERVENER, TESTIFIED WAS THE FORM OF COLLECTIVE AGREEMENT EXECUTED BY THE INTERVENER AND THE ASSOCIATION ON FEBRUARY 7, 1973. THE DURATION CLAUSE OF THE PURPORTED AGREEMENT PROVIDES THAT IT BECAME EFFECTIVE ON FEBRUARY 7, 1972 AND REMAINS IN EFFECT UNTIL DECEMBER 31, 1973. THE PREAMBLE OF THE SAID AGREEMENT FURTHER PROVIDES THAT IT IS BINDING ON EACH MEMBER OR PERSON REPRESENTED BY THE INTERVENER AND THE ASSOCIATION.

5. THE RESPONDENT COMMENCED AN ELECTRICAL CONTRACTING BUSINESS IN SEPTEMBER OF 1970. RAYMOND GLADU, THE PRESIDENT OF THE RESPONDENT, REMITTED PAYMENTS TO THE ADMINISTRATION OF A HEALTH AND WELFARE FUND AS PROVIDED FOR NOT ONLY IN THE CURRENT AGREEMENT REFERRED TO ABOVE BUT ALSO IN ACCORDANCE WITH AN IMMEDIATELY PRIOR PURPORTED COLLECTIVE AGREEMENT BETWEEN THE INTERVENER AND THE ASSOCIATION. MORE SPECIFICALLY, GLADU REMITTED PAYMENT ON BEHALF OF HIMSELF, HIS BROTHER DONALD, WHO IS A MEMBER OF MANAGEMENT OF THE RESPONDENT, AND ONE OF HIS EMPLOYEES DURING 1971 THROUGH MARCH OF 1972. HE CONTINUED TO CONTRIBUTE TO THE HEALTH AND WELFARE FUND FOR HIMSELF, HIS BROTHER AND A SECOND ADDITIONAL EMPLOYEE FROM APRIL TO AUGUST OF 1972. IN AUGUST OF 1972 HE CEASED TO MAKE REMITTANCES FOR HIMSELF AND HIS BROTHER BUT CONTINUED TO DO SO FROM THE WAGES OF THE TWO EMPLOYEES UNTIL THE END OF NOVEMBER 1972. ACCORDING TO GLADU THE REMITTANCE OF THE PREMIUMS TO THE HEALTH AND WELFARE FUND WHICH HE MADE DURING 1971 AND 1972 CAME ABOUT AS A RESULT OF AN ARRANGEMENT WHICH HE MADE WITH LOU POPOVICH. WE WOULD ADD THAT THE PROVISIONS OF THE FEBRUARY 7, 1972 AGREEMENT DEALING WITH THE HEALTH AND WELFARE FUND ONLY CONTEMPLATE CONTRIBUTIONS BEING MADE BY AN EMPLOYER FOR HOURLY RATED EMPLOYEES COVERED BY THE AGREEMENT.

6. THE UNDISPUTED EVIDENCE, HOWEVER, IS THAT AT NO TIME DID RAYMOND GLADU EXECUTE ON BEHALF OF THE RESPONDENT THE FORM OF AGREEMENT DATED FEBRUARY 7, 1972, PURPORTEDLY ENTERED INTO BY THE INTERVENER AND THE ASSOCIATION, NOR HAD HE BEEN A SIGNATORY TO THE PRIOR AGREEMENT BETWEEN THE SAID PARTIES. IN FACT, THE RESPONDENT ONLY APPLIED FOR AND BECAME A MEMBER OF THE ASSOCIATION IN JUNE OF 1972, OVER THREE MONTHS AFTER THE FEBRUARY 7, 1972 COLLECTIVE AGREEMENT WAS PURPORTEDLY EXECUTED BY

THE INTERVENER AND THE ASSOCIATION. FURTHER, THE EVIDENCE IS THAT NOT ALL OF THE EMPLOYEES OF THE RESPONDENT WERE PAID WAGES IN ACCORDANCE WITH THE CURRENT AGREEMENT BETWEEN THE INTERVENER AND THE ASSOCIATION NOR WERE OTHER OF THE TERMS OF AGREEMENT COMPLIED WITH BY THE RESPONDENT. MOREOVER, ACCORDING TO GLADU, EXCEPT FOR THE TWO EMPLOYEES REFERRED TO ABOVE, HE DID NOT DEDUCT THE PREMIUMS FOR THE HEALTH AND WELFARE FUND FROM THE WAGES OF HIS OTHER EMPLOYEES DURING 1971 AND 1972, AND HE ONLY MADE THE DEDUCTION FOR THE TWO EMPLOYEES CONCERNED UPON THEIR REQUEST.

7. NO SIGNED COPY OF THE PURPORTED COLLECTIVE AGREEMENT OF FEBRUARY 7, 1972 BETWEEN THE INTERVENER AND THE ASSOCIATION WAS FILED IN EVIDENCE WITH THE BOARD. LET US ASSUME FOR PURPOSES OF ARGUMENT, HOWEVER, THAT THE FORM OF COLLECTIVE AGREEMENT DATED FEBRUARY 7, 1972 WAS EXECUTED BY THE SAID PARTIES. GLADU TO A LIMITED EXTENT COMPLIED WITH THAT AGREEMENT AS IT RELATED TO ITS HEALTH AND WELFARE FUND PROVISIONS DURING 1972. NOTWITHSTANDING THAT FACT, SINCE GLADU AT NO TIME EXECUTED THE FORM OF THE FEBRUARY 7, 1972 AGREEMENT AND ONLY BECAME A MEMBER OF THE ASSOCIATION AFTER IT CAME INTO EFFECT, WE FIND THAT THE RESPONDENT IS NEITHER A PARTY TO NOR BOUND BY THE SAID COLLECTIVE AGREEMENT BETWEEN THE INTERVENER AND THE ASSOCIATION.

8. IN LIGHT OF THE FOREGOING THERE IS NO COLLECTIVE AGREEMENT WHICH IS IN ANY WAY AN IMPEDIMENT OR BAR TO THE INSTANT APPLICATION. ACCORDINGLY, THE APPLICATION IS TIMELY. WE THEREFORE SEE NO REASON TO REVOKE OUR CERTIFICATE OF JANUARY 30, 1973 ISSUED TO THE APPLICANT IN THIS MATTER.

9. WE WOULD MENTION THAT COUNSEL FOR THE INTERVENER AT THE BOARD HEARING ON APRIL 30, 1973 WITHDREW ALLEGATIONS WHICH THE INTERVENER HAD MADE RELATING BOTH TO NOTICE TO EMPLOYEES OF THE APPLICATION AND WITH RESPECT TO THE STATUS OF THE APPLICANT. THE BOARD ACCORDINGLY WAS NOT CALLED UPON TO ENTERTAIN THESE ALLEGATIONS.

10. IN THE RESULT, SINCE THE EVIDENCE DOES NOT SUPPORT THE ALLEGATION OF THE INTERVENER THAT THE INSTANT APPLICATION WAS UNTIMELY, BY VIRTUE OF AN EXISTING COLLECTIVE AGREEMENT BINDING UPON THE RESPONDENT, THE ALLEGATION MUST BE AND IS HEREBY DISMISSED.

2302-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. HAMILTON SOCIETY FOR PREVENTION OF CRUELTY TO ANIMALS (RESPONDENT).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND F. W. MURRAY.

APPEARANCES AT THE HEARING: W. A. ACTON AND G. MACDONALD FOR THE APPLICANT; D. L. BRISBIN AND J. C. BRYAN FOR THE RESPONDENT.

DECISION OF THE BOARD: MAY 16, 1973.

1. PURSUANT TO THE DECISION OF THE BOARD IN THIS MATTER DATED



FEBRUARY 20, 1973, AN EXAMINER CONVENED A MEETING OF THE PARTIES TO INQUIRE INTO AND REPORT BACK TO THE BOARD ON THE DUTIES AND RESPONSIBILITIES OF THOSE PERSONS CLASSIFIED BY THE RESPONDENT AS INSPECTORS, WHICH CULMINATED IN THE REPORT OF THE EXAMINER HEREIN DATED MARCH 22, 1973. AT A HEARING CONDUCTED ON MAY 10, 1973, THE BOARD ENTERTAINED THE REPRESENTATION OF THE PARTIES CONCERNING THE CONCLUSIONS THAT THE BOARD SHOULD REACH IN VIEW OF THE SAID REPORT.

2. PURSUANT TO THE INITIAL DECISION OF THE BOARD IN THIS MATTER DATED AUGUST 15, 1972, THE BARGAINING UNIT WAS DEFINED AS FOLLOWS:

"HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT ASSISTANT KENNEL MASTER, PERSONS ABOVE THE RANK OF ASSISTANT KENNEL MASTER, THE CONFIDENTIAL SECRETARY TO THE MANAGER AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING."

3. IT IS THE CONTENTION OF THE RESPONDENT THAT THE INSPECTORS ARE EXCLUDED FROM THE SAID BARGAINING UNIT ON TWO GROUNDS, VIZ., THAT THEY ARE PERSONS WHOSE CLASSIFICATION IS ABOVE THE RANK OF ASSISTANT KENNEL MASTER AND, SECONDLY, THAT THEY ARE MEMBERS OF A POLICE FORCE WITHIN THE MEANING OF THE POLICE ACT, R.S.O., 1970, c. 351, AND THEREFORE ARE EXCLUDED PURSUANT TO THE PROVISIONS OF SECTION 2(D) OF THE LABOUR RELATIONS ACT.

4. AS RECORDS THE SECOND SUBMISSION OF THE RESPONDENT, THE BOARD FINDS HAVING REGARD TO THE TOTALITY OF THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES THERETO, THAT THE INSPECTORS ARE NOT MEMBERS OF A POLICE FORCE WITHIN THE MEANING OF SECTION 2(D) OF THE LABOUR RELATIONS ACT.

5. AT THE CONTINUATION OF HEARING ON FEBRUARY 20, 1973, PURSUANT TO THE DECISION OF THE BOARD DATED DECEMBER 29, 1972, THE APPLICANT TOOK THE POSITION THAT AS THE RESPONDENT SAW FIT TO RE-OPEN THESE PROCEEDINGS AS REGARDS CLARIFICATION AS TO WHETHER THESE INSPECTORS WERE INCLUDED IN THE BARGAINING UNIT AS SET OUT IN PARAGRAPH #2 HEREIN, THEN IT MIGHT RECONSIDER ITS AGREEMENT TO THE EFFECT THAT ASSISTANT KENNEL MASTER AND KENNEL MASTER WERE TO BE EXCLUDED. AT THE FURTHER CONTINUATION OF HEARING ON MAY 10, 1973, THE APPLICANT INDICATED THAT IT NOW TOOK THE POSITION THAT THE ASSISTANT KENNEL MASTER AND KENNEL MASTER SHOULD BE INCLUDED IN THE BARGAINING UNIT. WHILE THE BOARD HAS INDICATED TO THE PARTIES ITS WILLINGNESS TO TREAT THIS APPLICATION INSOFAR AS IT RELATES TO THE STATUS OF THE INSPECTORS AS ONE BROUGHT PURSUANT TO THE PROVISIONS OF SECTION 95(2) OF THE LABOUR RELATIONS ACT, THE SAME CANNOT BE SAID FOR RE-OPENING THE QUESTION AS TO THE DUTIES AND RESPONSIBILITIES OF THE ASSISTANT KENNEL MASTER AND KENNEL MASTER, HAVING REGARD TO THE SPECIFIC AGREEMENT OF THE

PARTIES UPON THIS ISSUE PURSUANT TO THE DECISION OF THE BOARD IN THIS MATTER DATED AUGUST 15, 1972. TO PERMIT THE APPLICANT IN THESE CIRCUMSTANCES TO NOW UNILATERALLY REPUDIATE ITS AGREEMENT IN THESE CIRCUMSTANCES WOULD HAVE THE EFFECT, IN OUR OPINION OF MAKING PROCEEDINGS BEFORE THIS BOARD INTERMINABLE AND INCONCLUSIVE, AND NOT CONDUCTIVE TO THE BEST INTERESTS OF LABOUR RELATIONS. (IN THIS REGARD, SEE THE UNIVERSITY OF WINDSOR CASE [1971] OLRB REP., P. 344; THE BELCOURT CONSTRUCTION (OTTAWA) CASE OLRB M.R. DECEMBER 1970, P. 944; CONTINENTAL CAN COMPANY OF CANADA LIMITED CASE [1971] OLRB REP., P. 269.)

6. HAVING CAREFULLY CONSIDERED ALL OF THE CIRCUMSTANCES, WE ARE NOW OF THE OPINION THAT AN ISSUE ARISES AS TO WHETHER THE ACTIVITIES OF THE INSPECTORS FALL WITHIN THE PURVIEW OF SECTION 1(3)(B) OF THE ACT. IN THE EVENT THAT THE BOARD SHOULD MAKE A NEGATIVE FINDING IN THIS REGARD, WE WOULD THEN BE CONCERNED WITH THE FURTHER ISSUE AS TO THE COMMUNITY OF INTEREST, IF ANY, SHARED BY THESE INSPECTORS WITH THE REMAINDER OF THE EMPLOYEES IN THE BARGAINING UNIT.

7. IN THESE CIRCUMSTANCES, THEREFORE, MR. D. K. AYNLEY, EXAMINER IS FURTHER AUTHORIZED TO INQUIRE INTO AND REPORT BACK TO THE BOARD ON THE ISSUES AS RAISED IN PARAGRAPH #6 HEREIN.

3541-72-R: ASSOCIATION OF COMMERCIAL AND TECHNICAL EMPLOYEES LOCAL 1701 (APPLICANT) V. CANADIAN UNDERWRITERS' ASSOCIATION (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS H.J.F. ADE AND E. BOYER.

APPEARANCES AT THE HEARING: LORNE INGLE AND BILL HOWES FOR THE APPLICANT; JOHN P. SANDERSON, T. HANSON AND S. BERNARDO FOR THE RESPONDENT; D. B. WOOD, DOLORES LEBLANC, ANTHONY GARSTIN AND RUTH LIVINGSTON FOR THE OBJECTORS.

DECISION OF THE BOARD: MAY 23, 1973.

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3. THIS IS AN APPLICATION IN WHICH THE APPLICANT IS REQUIRED TO SATISFY THE BOARD THAT IT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT. THE EVIDENCE ADDUCED BY THE APPLICANT RELATING TO ITS STATUS IS OUTLINED BELOW.

4. A MEETING WAS HELD IN THE REGIONAL OFFICES OF THE CANADIAN LABOUR CONGRES (HEREINAFTER REFERRED TO AS THE C.L.C.) AT TORONTO ON THE EVENING OF MARCH 22, 1973. IN ATTENDANCE AT THE MEETING WERE EMPLOYEES OF THE RESPONDENT AND WILLIAM HOWES, A REPRESENTATIVE OF THE C.L.C. WHO CHAIRED THE MEETING. MINUTES OF THE MEETING, WHICH WERE IDENTIFIED BY HOWES AND WHICH HE TESTIFIED WERE AN ACCURATE ACCOUNT OF WHAT TRANSPIRED

AT THE MEETING, WERE FILED AS AN EXHIBIT. ACCORDING TO THE MINUTES, THE EMPLOYEES OF THE RESPONDENT IN ATTENDANCE PASSED A MOTION TO FORM A UNION AND APPLY TO THE C.L.C. FOR A CHARTER. A FURTHER MOTION WAS PASSED ESTABLISHING AN INITIATION FEE FOR MEMBERSHIP IN THE UNION OF \$1.00 PER MEMBER. (UNDER AUTHORITY OF THE CONSTITUTION OF THE C.L.C., THE SECRETARY-TREASURER OF THE C.L.C. HAD GRANTED SPECIAL DISPENSATION REDUCING THE STANDARD INITIATION FEE TO \$1.00.) TEMPORARY OFFICERS WERE THEN ELECTED. A MOTION WAS PASSED ESTABLISHING UNION DUES AT \$4.50 FOR EACH MEMBER PER MONTH. A MOTION WAS ALSO PASSED THAT LOCAL UNION No. 1701 AFFILIATE WITH THE PROVINCIAL FEDERATION OF LABOUR AND THE METROPOLITAN TORONTO DISTRICT LABOUR COUNCIL C.L.C. AS WELL, A MOTION WAS PASSED TO ESTABLISH AN EDUCATION COMMITTEE AND FOUR PERSONS WERE ELECTED TO THAT COMMITTEE. FINALLY, A MOTION WAS PASSED AUTHORIZING HOWES TO MAKE AN APPLICATION FOR CERTIFICATION WHEN THE APPROPRIATE NUMBER OF EMPLOYEES IN THE UNIT HAD SIGNED MEMBERSHIP CARDS AND PAID THEIR INITIATION FEES.

5. HOWES TESTIFIED THAT HE HAD BEEN IN COMMUNICATION WITH JOSEPH MACKENZIE, THE DIRECTOR OF ORGANIZATION OF THE C.L.C., ON MARCH 22, PRIOR TO THE MEETING, AND THE LATTER INFORMED HOWES THAT LOCAL NUMBER 1701 WOULD BE RESERVED FOR THE UNION FORMED BY THE EMPLOYEES OF THE RESPONDENT PENDING A FORMAL APPLICATION FOR A CHARTER. IMMEDIATELY SUBSEQUENT TO THE MEETING HOWES ADVISED MACKENZIE THAT THE EMPLOYEES HAD FORMED A UNION AND HAD PASSED A MOTION TO APPLY TO THE C.L.C. FOR A CHARTER. MACKENZIE ON THAT OCCASION AGAIN CONFIRMED THAT LOCAL NUMBER 1701 WOULD BE DESIGNATED TO THE UNION UPON RECEIPT OF THE APPLICATION FOR A CHARTER.

6. ON THE SAME EVENING AS THE MEETING OF MARCH 22, AN APPLICATION WAS COMPLETED. THE APPLICATION WHICH IS DATED MARCH 22, 1973 BEARS THE SIGNATURES AND ADDRESSES OF THE NINE OFFICERS WHO HAD BEEN ELECTED AT THE MEETING AND THE SIGNATURES OF THREE OTHER PERSONS SHOWN AS MEMBERS. ATTACHED TO THE APPLICATION WAS A LIST OF EMPLOYEES OF THE RESPONDENT INDICATED AS BEING MEMBERS INCLUDING THOSE WHO HAD BEEN ELECTED AS OFFICERS. AN INTERIM CHARTER DATED MARCH 22, 1973 WAS ISSUED TO THE TWELVE APPLICANT EMPLOYEES OF THE RESPONDENT TO BE KNOWN AS "ASSOCIATION OF COMMERCIAL AND TECHNICAL EMPLOYEES LOCAL 1701" SITUATE AT TORONTO IN THE PROVINCE OF ONTARIO. THE CHARTER BEARS THE SIGNATURES OF THE FOUR SENIOR OFFICERS OF THE C.L.C. MACKENZIE TESTIFIED THAT THE CHARTER WAS NOT ISSUED UNTIL RECEIPT OF THE APPLICATION BUT WAS BACK DATED TO MARCH 22, 1973, THE DATE OF THE APPLICATION. ON MARCH 30, 1973, THE INSTANT APPLICATION FOR CERTIFICATION WAS FILED OVER THE SIGNATURE OF WILLIAM HOWES.

7. THERE WAS FILED WITH THE BOARD AS EXHIBITS THE CONSTITUTION OF THE C.L.C. AND THE BY-LAWS GOVERNING CHARTERED LOCAL UNIONS. ARTICLE XVI OF THE CONSTITUTION PROVIDES INTER ALIA THAT THE C.L.C. MAY ISSUE CHARTERS TO LOCAL UNIONS AND ORGANIZING COMMITTEES AND THAT THE EXECUTIVE COUNCIL OF THE C.L.C. SHALL ISSUE RULES GOVERNING THE CONDUCT, ACTIVITIES, AFFAIRS, FINANCES AND PROPERTY OF ORGANIZING COMMITTEES AND DIRECTLY CHARTERED LOCAL UNIONS. MACKENZIE TESTIFIED THAT THE C.L.C. FIRST GRANTS AN INTERIM CHARTER AND THAT IF THE CHARTERED LOCAL UNION IS SUCCESSFUL IN SECURING BARGAINING RIGHTS FOR THE EMPLOYEES CONCERNED



THE C.L.C. THEN ISSUES A PERMANENT CHARTER. MACKENZIE FURTHER TESTIFIED THAT DURING THE PERIOD BETWEEN THE GRANTING OF AN INTERIM AND PERMANENT CHARTER, THE LOCAL REMAINS UNDER THE ADMINISTRATION OF THE PARENT C.L.C.

8. THE BY-LAWS PROVIDE INTER ALIA THAT ANY GROUP OF TEN OR MORE WORKERS MAY MAKE APPLICATION TO THE C.L.C. FOR A CHARTER FOR A LOCAL UNION PROVIDED THAT THE APPLICATION IS ACCOMPANIED BY A FEE OF \$25.00 TOGETHER WITH A LIST OF THOSE WHO HAVE PAID THEIR INITIATION FEES AND HAVE BEEN ACCEPTED INTO MEMBERSHIP. THE BY-LAWS ALSO PROVIDE FOR THE ELECTION OF OFFICERS FOR EACH LOCAL UNION. AS WELL, THE BY-LAWS PROVIDE THAT THE OBJECT OF THE LOCAL UNION SHALL BE TO REGULATE THE CONDITIONS OF EMPLOYMENT BETWEEN ITS MEMBERS AND THE EMPLOYEES WITH WHOM IT HAS A COLLECTIVE BARGAINING RELATIONSHIP.

9. WHEN A LOCAL IS CHARTERED BY THE C.L.C. IT IS CHARTERED PURSUANT TO AN EXISTING CONSTITUTION, THAT IS, THE CONSTITUTION OF THE C.L.C. (SEE ARTICLE XVI). MOREOVER, THE PROVISIONS OF ARTICLE XVI TOGETHER WITH THE BY-LAWS GOVERNING CHARTERED LOCAL UNIONS MADE PURSUANT TO ARTICLE XVI PROVIDE A FORMAL CONSTITUTION FOR ANY DIRECTLY CHARTERED LOCAL THE MOMENT THE CHARTER NUMBER IS DESIGNATED OR THE CHARTER ITSELF ISSUED (SEE COCHRANE-DUNLOP HARDWARE LTD. CASE, 63 CLLC 1135, WHICH DECISION WAS UPHELD BY THE HIGH COURT AND COURT OF APPEAL IN UNREPORTED DECISIONS DATED APRIL 26, 1963 AND OCTOBER 10, 1963, RESPECTIVELY). ACCORDINGLY, AS OF MARCH 22, 1973 WHEN THE APPLICANT HELD ITS ORGANIZATIONAL MEETING IT HAD A CONSTITUTION.

10. ACCORDINGLY, WE ARE SATISFIED THAT THE APPLICANT IS AN ORGANIZATION OF EMPLOYEES FORMED FOR PURPOSES THAT INCLUDE THE REGULATION OF RELATIONS BETWEEN EMPLOYEES AND EMPLOYERS AS WELL AS BEING A VIABLE ENTITY. WE THEREFORE FIND THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT (SEE DECISION OF BOARD IN ECONOMICAL MUTUAL INSURANCE COMPANY CASE, OLRB M.R. FEBRUARY 1972 P. 176, WHICH DECISION WAS UPHELD WITH RESPECT TO THE BOARD'S JURISDICTION BY THE DIVISIONAL COURT UPON A REQUEST FOR JUDICIAL REVIEW).

11. IN SUPPORT OF ITS APPLICATION, THE APPLICANT FILED 81 COMBINATION APPLICATIONS FOR MEMBERSHIP AND RECEIPTS. OF THAT NUMBER, 24 ARE DATED BETWEEN AND INCLUDING FEBRUARY 24 AND MARCH 21, 1973. THE REMAINDER ARE DATED ON AND AFTER MARCH 22, 1973. ALL OF THE EMPLOYEES OF THE RESPONDENT ELECTED AS OFFICERS OF THE UNION OR AS MEMBERS OF THE EDUCATION COMMITTEE AT THE ORGANIZATIONAL MEETING ON MARCH 22, AND WHO WERE THE SAME PERSONS THAT APPLIED FOR THE CHARTER, SIGNED THE COMBINATION APPLICATIONS AND RECEIPTS FILED BY THE APPLICANT ON THEIR BEHALF DURING THE PERIOD FROM FEBRUARY 24 TO MARCH 22, 1973. HOWES TESTIFIED THAT THE SPACE ON THE CARDS FOR THE LOCAL NUMBER WAS LEFT BLANK WHEN THE EMPLOYEES WHO COMPLETED APPLICATIONS FOR MEMBERSHIP IN THE ASSOCIATION OF COMMERCIAL AND TECHNICAL EMPLOYEES SIGNED THEM PRIOR TO MARCH 21, 1973. HOWES FURTHER TESTIFIED THAT ONCE THE LOCAL NUMBER WAS DESIGNATED, THE NUMBER OF THE LOCAL, NAMELY LOCAL 1701, WAS INSERTED IN THE APPROPRIATE SPACE ON THESE APPLICATIONS. HIS TESTIMONY IS THAT THE LOCAL NUMBER 1701 WAS INSERTED ON THE REMAINING CARDS

FOR ALL PERSONS AT THE TIME THEY SIGNED MEMBERSHIP CARDS AFTER THE NUMBER WAS DESIGNATED.

12. THE QUESTION ARISES AS TO WHAT WEIGHT CAN BE GIVEN TO THE EVIDENCE OF MEMBERSHIP SIGNED BETWEEN FEBRUARY 24 AND MARCH 21, 1973 PRIOR TO THE DESIGNATION OF LOCAL NUMBER 1701 TO THE UNION BY THE DIRECTOR OF ORGANIZATION OF THE C.L.C. OUR NUMBER TO THAT QUESTION IS THAT THE PARTICIPATION OF THOSE EMPLOYEES WHO SIGNED CARDS DURING THIS PERIOD IN THE ORGANIZATIONAL MEETING ON MARCH 22, 1973 EITHER BY WAY OF PROPOSING OR SECONDING MOTIONS OR BY STANDING FOR ELECTION AS OFFICERS OF THE UNION OR ITS EDUCATION COMMITTEE IS CONDUCT WHICH IN OUR VIEW CAN ONLY BE INTERPRETED AS AN AFFIRMATION OF THEIR MEMBERSHIP IN LOCAL 1701. THEIR PARTICIPATION IN THE MARCH 22 MEETING MAKES IT CLEAR THAT THEY WERE AWARE THAT THE APPLICATIONS FOR MEMBERSHIP WHICH THEY HAD SIGNED WERE FOR LOCAL 1701 AND THAT THEIR MEMBERSHIP APPLICATIONS WOULD BE SUBMITTED IN SUPPORT OF THE INSTANT APPLICATION OF THE APPLICANT. THEREFORE, WE FIND THAT THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT ON BEHALF OF THOSE EMPLOYEES WHO SIGNED MEMBERSHIP CARDS ON OR BEFORE MARCH 21, 1973, WHO ACCORDING TO THE MINUTES PARTICIPATED IN THE ORGANIZATIONAL MEETING OF MARCH 22, 1973, MEETS THE MEMBERSHIP REQUIREMENTS OF SECTION 1(1)(J) OF THE ACT. IN THE RESULT, WE ACCEPT THE EVIDENCE OF MEMBERSHIP WHICH THE APPLICANT HAS SUBMITTED FOR 68 PERSONS.

13. WITH RESPECT TO THE BARGAINING UNIT, MR. H. C. DRAPER, EXAMINER, IS AUTHORIZED TO INQUIRE INTO AND REPORT TO THE BOARD ON THE COMPOSITION OF THE BARGAINING UNIT AND MORE PARTICULARLY ON THE FOLLOWING MATTERS:

- (1) THE DUTIES AND RESPONSIBILITIES OF DONAL M. BAIRD, CLASSIFIED AS DIRECTOR OF FIRE PREVENTION ENGINEERING; ALAN J. C. BOAK AND TONY G. REYNOLDS, CLASSIFIED AS SECRETARIES OF PERSONAL LINES AND PROPERTY COMMITTEE; J. M. CLOUSTON AND WM. V. ROBINSON, CLASSIFIED AS SECRETARIES OF THE AUTO AND CASUALTY COMMITTEE.
- (2) THE STATUS AND IDENTITY OF THE PROFESSIONAL ENGINEERS IN THE EMPLOY OF THE RESPONDENT.
- (3) THE COMMUNITY OF INTEREST BETWEEN THE EMPLOYEES OF THE RESPONDENT IN THE PLANS DIVISION DEPARTMENT WITH THE OTHER EMPLOYEES OF THE RESPONDENT.

3172-72-R: INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, A.F.L., C.I.O.,-C.L.C. (APPLICANT) v. THAMES VALLEY BEVERAGES (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: E. G. POSEN FOR THE APPLICANT; R. A. WERRY FOR THE RESPONDENT.

DECISION OF THE BOARD: MAY 22, 1973.

1. HAVING REGARD TO THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER DATED MARCH 30, 1973 AND THE REPRESENTATIONS OF THE PARTIES WITH RESPECT THERETO, THE BOARD FINDS THAT THE PENDING CONSOLIDATION OF THE RESPONDENT'S OPERATIONS AT LONDON BY MEANS OF A TRANSFER OF THE RESPONDENT'S EMPLOYEES AT BRANTFORD DID NOT CONSTITUTE A "BUILD-UP" SITUATION WHICH WOULD REQUIRE THE BOARD TO POSTPONE THE TAKING OF THE REPRESENTATION VOTE IN THIS MATTER. WHILE THE TIME FOR THE CONTEMPLATED TRANSFER OF THE BRANTFORD EMPLOYEES TO LONDON WAS DRAWING NEAR AT THE TIME THIS APPLICATION WAS MADE, IT IS NOTED THAT THIS TRANSFER WAS CONTEMPLATED AS FAR BACK AS 1969. THE PRINCIPLE OF BUILD-UP HAS ONLY BEEN APPLIED WHERE A NEW OPERATION IS COMMENCED BY AN EMPLOYER AND AN APPLICATION IS MADE BEFORE THE OPERATION ACTUALLY GETS UNDERWAY. IN THIS INSTANCE THE EMPLOYER HAD CARRIED ON BUSINESS IN LONDON FOR APPROXIMATELY FOUR OR FIVE YEARS PRIOR TO THE MAKING OF THIS APPLICATION AND THE FACT THAT IT INTENDED TO ALTER A PORTION OF ITS OPERATIONS IN LONDON DOES NOT GIVE RISE TO A SITUATION WHICH THE BOARD WOULD APPLY THE PROCEDURES IT APPLIES IN A "BUILD-UP" SITUATION.

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3780-73-U: BEATTY-HALL CONSTRUCTION CO. LIMITED (APPLICANT) V. HAMILTON BUILDING AND CONSTRUCTION TRADES COUNCIL AND A. DAVIDSON (RESPONDENTS).

BETWEEN: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS H.J.F. ADE AND E. BOYER.

APPEARANCES AT THE HEARING: D.L. BRISBIN AND D.A. HALL FOR THE APPLICANT; A.H. DAVIDSON FOR THE RESPONDENT.

DECISION OF THE BOARD: MAY 28, 1973.

1. THE NAME "THE HAMILTON BUILDING TRADES COUNCIL AND A. DAVIDSON" APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "HAMILTON BUILDING AND CONSTRUCTION TRADES COUNCIL AND A. DAVIDSON".

2. THIS IS AN APPLICATION FOR RELIEF PURSUANT TO SECTION 123 OF THE LABOUR RELATIONS ACT WHEREIN THE APPLICANT REQUESTS A DIRECTION AGAINST THE RESPONDENTS TO REFRAIN FROM PERFORMING CERTAIN ACTS WITH RESPECT TO AN UNLAWFUL STRIKE. THE FACTS ARE AS FOLLOWS: THE APPLICANT IS A GENERAL CONTRACTOR AND AT ALL MATERIAL TIMES WAS ENGAGED IN THE CONSTRUCTION OF A BUILDING AT THE MUNTZ STEREO SITE ON PIONEER ROAD IN BURLINGTON. THE APPLICANT HAD A NUMBER OF SUBCONTRACTS AND MANY OF THE SUBCONTRACTORS IN TURN HAD COLLECTIVE AGREEMENTS WITH VARIOUS TRADE UNIONS. ON OR ABOUT MAY 7, 1973,



A PICKET LINE WAS ESTABLISHED AT THE CONSTRUCTION SITE AND THAT PICKET LINE CONTINUED TO THE DATE OF THIS APPLICATION WHICH WAS MAY 10, 1973, AND EVEN BEYOND THAT DATE.

3. THE EVIDENCE CLEARLY ESTABLISHES THAT EMPLOYEES OF THE VARIOUS SUBCONTRACTORS WHO WERE BOUND BY COLLECTIVE AGREEMENTS REFUSED TO CROSS THE PICKET LINE IN ORDER TO PERFORM WORK ON THE CONSTRUCTION PROJECT, AND IT APPEARS THAT THOSE PERSONS ENGAGED IN UNLAWFUL STRIKE. THERE WAS NO WORK PERFORMED FROM MAY 7TH UNTIL THE DATE OF THE HEARING WITH THE EXCEPTION THAT EMPLOYEES OF THE MASONRY CONTRACTOR CAME IN TO PERFORM WORK ON A CONCRETE BLOCK WALL WHICH HAD FALLEN AND WHICH WAS A HAZARD. THE WALL HAD FALLEN BECAUSE EMPLOYEES OF ONE SUBCONTRACTOR HAD REFUSED TO CROSS THE PICKET LINE TO PROVIDE SUPPORT FOR THE WALL.

4. THE EVIDENCE ALSO ESTABLISHED THAT MR. D.A. HALL, WHO IS PRESIDENT AND GENERAL MANAGER OF THE APPLICANT HAD DISCUSSIONS WITH MR. A. DAVIDSON, WHO IS DESCRIBED AS THE "HEAD" OF THE HAMILTON BUILDING AND CONSTRUCTION TRADES COUNCIL. MR. HALL'S EVIDENCE INDICATES THAT IN THE COURSE OF THE CONVERSATION HE ASKED MR. DAVIDSON TO REMOVE THE PICKET LINE AND MR. DAVIDSON REFUSED. MR. DAVIDSON ALSO INDICATED THAT THE REASON FOR THE PICKET LINE WAS BECAUSE THERE WAS A SUBCONTRACTOR WHO WAS TO COME ON TO THE PROJECT WHO WAS NOT ACCEPTABLE BECAUSE THAT SUBCONTRACTOR HAD A COLLECTIVE AGREEMENT WITH A "NON-APPROVED" TRADE UNION. MR. HALL FURTHER TESTIFIED THAT MR. DAVIDSON CONFIRMED IN HIS CONVERSATION THAT THE HAMILTON BUILDING AND CONSTRUCTION TRADES COUNCIL WERE THE ONES WHO PUT ON THE PICKET LINE. MR. DAVIDSON WAS PRESENT AT THE HEARING AND CHOSE NOT TO TESTIFY.

5. WHILE MR. DAVIDSON'S POSITION WITH THE RESPONDENT, HAMILTON BUILDING AND CONSTRUCTION TRADES COUNCIL, WAS NOT MADE CLEAR, IN EVIDENCE IT WOULD APPEAR THAT HE WAS THE "HEAD" OF THAT ORGANIZATION AND AT THE VERY LEAST IS AN AGENT OF THAT COUNCIL WITHIN THE MEANING OF SECTION 123 OF THE ACT. SINCE MR. DAVIDSON IS A PARTY TO THESE PROCEEDINGS AND IS AN AGENT OF THE RESPONDENT, HAMILTON BUILDING AND CONSTRUCTION TRADES COUNCIL, WE ARE OF THE OPINION THAT THE UNCONTRADICTED ADMISSIONS MADE BY MR. DAVIDSON CONSTITUTED AN ADMISSION AGAINST INTEREST ON HIS OWN BEHALF AND ON BEHALF OF THE HAMILTON BUILDING AND CONSTRUCTION TRADES COUNCIL, AND THOSE ADMISSIONS INDICATE THAT MR. DAVIDSON EITHER PROCURED AN UNLAWFUL STRIKE OR AT THE VERY LEAST SUPPORTED AN UNLAWFUL STRIKE BY "PUTTING ON THE PICKETS" AT THE CONSTRUCTION SITE WHICH IS THE SUBJECT MATTER OF THIS APPLICATION.

6. IN BALANCING THE INTEREST OF THE VARIOUS PARTIES WHO ARE THE SUBJECT MATTER OF THIS APPLICATION, WE ARE SATISFIED THAT THE APPLICANT HAS AN INTEREST IN THE PROJECT CONTINUING AND THAT HE HAS SUFFERED HARM AND IS CONTINUING TO SUFFER HARM AS A RESULT OF THE PICKETING. WE ARE OF THE OPINION THAT THE APPLICANT IS AN INNOCENT PARTY CAUGHT IN A DISPUTE BETWEEN RIVAL TRADE UNIONS WHICH HE HAS NOT CAUSED AND IN WHICH HE HAS NO INTEREST, AND WE SEE NO REASON WHY HE SHOULD CONTINUE TO SUFFER HARM IN THESE CIRCUMSTANCES. ACCORDINGLY, WE ARE SATISFIED THAT THE

INTEREST OF THE APPLICANT IN THIS MATTER OUTWEIGHS THE INTERESTS OF THE RESPONDENTS AND THAT THE APPLICANT IS ENTITLED TO A DIRECTION IN THIS MATTER.

7. WE THEREFORE CONFIRM OUR DECISION GIVEN ORALLY AT THE HEARING THAT THE RESPONDENTS ARE DIRECTED TO REFRAIN FROM CONTINUING TO PROCURE OR SUPPORT THE PICKET LINE AT THE MUNTZ STEREO SITE ON PIONEER ROAD IN BURLINGTON.

3619-73-U: UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL UNION 527 (APPLICANT) v. MCKENNA BROTHERS LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS A. MAIN AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: STANLEY SIMPSON AND JACK PORTER FOR THE APPLICANT; NO ONE FOR THE RESPONDENT.

DECISION OF THE BOARD: MAY 28, 1973.

1. THIS IS AN APPLICATION FOR A DECLARATION THAT THE RESPONDENT CALLED OR AUTHORIZED AN UNLAWFUL LOCKOUT. IT WOULD APPEAR FROM THE REPLY FILED BY THE RESPONDENT IN THIS MATTER THAT THE RESPONDENT TOOK THE POSITION THAT IT WAS NOT A PARTY TO A COLLECTIVE AGREEMENT WITH THE APPLICANT. HAVING CONSIDERED ALL THE EVIDENCE BEFORE US AND IN THE ABSENCE OF ANY EVIDENCE TO THE CONTRARY, WE FIND THAT THE RESPONDENT, AS A MEMBER OF THE MECHANICAL CONTRACTORS ASSOCIATION, ZONE 7, BECAME A PARTY TO A COLLECTIVE AGREEMENT WHICH WAS ENTERED INTO BETWEEN THE APPLICANT AND THE MECHANICAL CONTRACTORS ASSOCIATION, ZONE 7, EFFECTIVE FROM THE 11TH DAY OF AUGUST, 1970 UNTIL APRIL 30, 1973. THE EVIDENCE ESTABLISHED THAT THIS COLLECTIVE AGREEMENT WAS SIGNED BY THE PARTIES ON NOVEMBER 2, 1970 AND WAS MADE RETROACTIVE TO AUGUST 11, 1970.

2. THE EVIDENCE FURTHER ESTABLISHED THAT MEMBERS OF THE APPLICANT ENGAGED IN A LAWFUL STRIKE WHICH COMMENCED ON AUGUST 11, 1970 AND CONTINUED UP UNTIL THE TIME THE COLLECTIVE AGREEMENT WAS SIGNED. IMMEDIATELY PRIOR TO THE STRIKE SOME OF THE APPLICANT'S MEMBERS WERE EMPLOYEES OF THE RESPONDENT. WHILE THE EVIDENCE FAILED TO ESTABLISH WHETHER OR NOT THE RESPONDENT CARRIED ON BUSINESS IMMEDIATELY AFTER THE COMMENCEMENT OF THE STRIKE ON AUGUST 11, 1970, THE EVIDENCE DID ESTABLISH THAT THE RESPONDENT HAD EMPLOYEES PERFORMING WORK WHICH FELL WITHIN THE APPLICANT'S JURISDICTION IN APRIL OF 1972. AT THAT TIME THE BUSINESS MANAGER OF THE APPLICANT HAD A DISCUSSION WITH OFFICIALS OF THE RESPONDENT CONCERNING THE WORK PERFORMED BY FOUR OF THE RESPONDENT'S EMPLOYEES WHO WERE NOT MEMBERS OF THE APPLICANT. APPARENTLY, THE RESPONDENT DID NOT BELIEVE THAT IT WAS A PARTY TO A COLLECTIVE AGREEMENT WITH THE APPLICANT AT THAT TIME SINCE THE RESPONDENT'S OFFICIALS INDICATED THAT IF THE RESPONDENT UNDERTOOK BIGGER JOBS THE RESPONDENT WOULD AT THAT TIME ENTER INTO A COLLECTIVE AGREEMENT WITH THE APPLICANT.

3. WHILE THE EVIDENCE ESTABLISHED THAT THE RESPONDENT WAS CARRYING ON WORK WITH EMPLOYEES WHO WERE NOT MEMBERS OF THE APPLICANT, THE EVIDENCE FAILED TO ESTABLISH THAT THE RESPONDENT EVER REFUSED TO EMPLOY OR CONTINUE TO EMPLOY ANY OF ITS EMPLOYEES WHO WERE MEMBERS OF THE APPLICANT. INDEED, THE APPLICANT HAD NEVER REFERRED ANY OF ITS MEMBERS TO THE RESPONDENT FOR EMPLOYMENT DURING THE TERM OF OPERATION OF THE COLLECTIVE AGREEMENT REFERRED TO ABOVE.

4. SECTION 1(1)(1) OF THE LABOUR RELATIONS ACT READS AS FOLLOWS:

1.--(1) IN THIS ACT,

(1) "LOCK-OUT" INCLUDES THE CLOSING OF A PLACE OF EMPLOYMENT, A SUSPENSION OF WORK OR A REFUSAL BY AN EMPLOYER TO CONTINUE TO EMPLOY A NUMBER OF HIS EMPLOYEES, WITH A VIEW TO COMPEL OR INDUCE HIS EMPLOYEES, OR TO AID ANOTHER EMPLOYER TO COMPEL OR INDUCE HIS EMPLOYEES, TO REFRAIN FROM EXERCISING ANY RIGHTS OR PRIVILEGES UNDER THIS ACT OR TO AGREE TO PROVISIONS OR CHANGES IN PROVISIONS RESPECTING TERMS OR CONDITIONS OF EMPLOYMENT OR THE RIGHTS, PRIVILEGES OR DUTIES OF THE EMPLOYER, AN EMPLOYERS' ORGANIZATION, THE TRADE UNION, OR THE EMPLOYEES;

5. IT IS READILY APPARENT FROM THE EVIDENCE REFERRED TO ABOVE THAT THE RESPONDENT AT NO TIME REFUSED "TO CONTINUE TO EMPLOY A NUMBER OF HIS EMPLOYEES, WITH A VIEW TO COMPEL OR INDUCE HIS EMPLOYEES...TO REFRAIN FROM EXERCISING ANY RIGHTS OR PRIVILEGES UNDER THIS ACT OR TO AGREE TO PROVISIONS OR CHANGES IN PROVISIONS RESPECTING TERMS OR CONDITIONS OF EMPLOYMENT ETC." AS CONTEMPLATED BY SECTION 1(1)(1) OF THE LABOUR RELATIONS ACT. WHILE IT MAY BE THAT THE RESPONDENT WAS IN VIOLATION OF THE TERMS AND CONDITIONS OF THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE APPLICANT WHEN IT EMPLOYED PERSONS WHO WERE NOT MEMBERS OF THE APPLICANT, SUCH ACTIONS ON THE PART OF THE RESPONDENT DO NOT CONSTITUTE AN UNLAWFUL LOCKOUT. IN ORDER THAT THE RESPONDENT BE GUILTY OF UNLAWFULLY LOCKING OUT ITS EMPLOYEES, THE EVIDENCE WOULD HAVE TO ESTABLISH THAT THE RESPONDENT REFUSED TO EMPLOY ITS EMPLOYEES FOR THE REASONS REFERRED TO IN SECTION 1(1)(1) OF THE LABOUR RELATIONS ACT. HAD THE APPLICANT, UPON SEEING NON-UNION MEMBERS PERFORMING BARGAINING UNIT WORK IN APRIL 1972, REFERRED ITS MEMBERS TO THE RESPONDENT AND HAD THE APPLICANT REQUESTED THE RESPONDENT TO HIRE SUCH EMPLOYEES AT THAT TIME, A DIFFERENT RESULT MIGHT HAVE FOLLOWED. HOWEVER THAT MAY BE, WHILE THE RESPONDENT DID NOT EMPLOY MEMBERS OF THE APPLICANT DURING THE TERM OF OPERATION OF THE COLLECTIVE AGREEMENT, THERE IS NO EVIDENCE WHICH WOULD INDICATE THAT THE RESPONDENT REFUSED TO CONTINUE TO EMPLOY ANY OF ITS FORMER EMPLOYEES FOR THE REASONS CONTEMPLATED BY SECTION 1(1)(1) OF THE ACT.

6. APART FROM ANY OTHER CONSIDERATION, WE NOTE THAT EVEN THOUGH



THE APPLICANT KNEW BARGAINING UNIT WORK WAS BEING PERFORMED BY EMPLOYEES OF THE RESPONDENT AS EARLY AS APRIL 1972, THE APPLICANT WAITED UNTIL APRIL 1973 TO APPLY FOR THE DECLARATION IT SEEKS IN THIS APPLICATION. SINCE THE COLLECTIVE AGREEMENT ON ITS FACE REMAINED IN EFFECT UNTIL APRIL 30, 1973, WHICH DATE WAS PRIOR TO THE HEARING IN THIS MATTER, AND IN VIEW OF THE APPLICANT'S DELAY IN LAUNCHING THIS APPLICATION, APART FROM ANY OTHER CONSIDERATION, THE BOARD IN THE EXERCISE OF ITS DISCRETION IS OF THE VIEW THAT IT SHOULD NOT MAKE THE DECLARATION SOUGHT BY THE APPLICANT IN THIS MATTER.

7. FOR THE REASONS SET OUT ABOVE THIS APPLICATION IS THEREFORE DISMISSED.

2938-72-R: LUMBER AND SAWMILL WORKERS' UNION, LOCAL 2995 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. SPRUCE-DALE LUMBER COMPANY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS D. B. ARCHER AND W. H. WIGHTMAN.

APPEARANCES AT THE HEARING: H. M. POLLIT, R. J. BRIXHE AND L. FONTAINE FOR THE APPLICANT; F. R. VON VEH, E. ROVET AND E. CHRISTIANSON FOR THE RESPONDENT; MICHAEL GORDON FOR THE OBJECTORS.

DECISION OF J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBER D. B. ARCHER:  
MAY 29, 1973.

1. BY A DECISION OF THE BOARD DATED MARCH 5, 1973 THE BOARD DIRECTED THE TAKING OF A REPRESENTATION VOTE AMONG THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT FOUND TO BE APPROPRIATE, NAMELY ALL EMPLOYEES OF THE RESPONDENT AT ITS SAWMILL, PLANING MILL AND YARD OPERATIONS AT MATTICE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD.

2. BY LETTER DATED APRIL 10, 1973 COUNSEL FOR THE RESPONDENT ALLEGED THAT ONE OF THE FOREMEN OF THE RESPONDENT, GREGOIRE POULIOT, HAD CONSISTENTLY ENGAGED IN PROPAGANDA IN SUPPORT OF THE APPLICANT TRADE UNION. COUNSEL FOR THE RESPONDENT IN HIS LETTER WENT ON TO STATE THAT AT THE APPROPRIATE TIME HE WOULD BE MAKING FURTHER AND OTHER REPRESENTATIONS IN REGARD TO THIS CONDUCT WHICH IN HIS SUBMISSION WAS IMPROPER AND IRREGULAR AND CONTRARY TO THE PRINCIPLES OF JURISDICTION ESTABLISHED BY THE BOARD. BY LETTER DATED APRIL 25, 1973, SUBSEQUENT TO THE TAKING OF THE REPRESENTATION VOTE ON APRIL 17, 1973, COUNSEL FOR THE RESPONDENT PROVIDED PARTICULARS OF THE ALLEGED CONDUCT OF THE FOREMAN GREGOIRE POULIOT AND SUBMITTED THAT THE VOTE HELD ON APRIL 17, 1973 SHOULD BE SET ASIDE AND A NEW VOTE DIRECTED. WE WOULD MENTION HERE THAT 30 PERSONS CAST BALLOTS IN THE VOTE ON APRIL 17 AND OF THAT NUMBER 16 WERE CAST IN FAVOUR OF THE APPLICANT AND 14 WERE CAST AGAINST THE APPLICANT.

3. TWO EMPLOYEES OF THE RESPONDENT, REGIS MALENFANT AND GERALD

CHRISTIANSON, THE LATTER OF WHOM IS A NEPHEW OF THE PRESIDENT OF THE RESPONDENT COMPANY, EDWARD CHRISTIANSON, WERE CALLED AS WITNESSES BY THE RESPONDENT. BOTH EMPLOYEES WERE HIRED BY THE RESPONDENT IN FEBRUARY OF 1973 AND THEY WORK IN THE PLANING MILL WHERE THERE ARE A TOTAL OF FIVE OR SIX EMPLOYEES. THE REMAINING EMPLOYEES OF THE RESPONDENT WORK IN THE SAWMILL SOME SIX HUNDRED FEET AWAY FROM THE PLANING MILL. DON CHRISTIANSON, A BROTHER OF THE PRESIDENT EDWARD CHRISTIANSON, IS THE FOREMAN IN THE SAWMILL AND GREGOIRE POULIOT IS THE FOREMAN IN THE PLANING MILL. THE LATTER HAS HELD THAT POSITION SINCE JULY OF 1972 WHEN THE PLANING MILL COMMENCED PRODUCTION OPERATIONS.

4. BOTH GERALD CHRISTIANSON AND REGIS MALENFANT TESTIFIED THAT SINCE THEY WERE HIRED AND UP TO AND INCLUDING APRIL 10, 1973, POULIOT SPOKE TO THE FIVE OR SIX EMPLOYEES IN THE PLANING MILL DURING COFFEE BREAKS ON NUMEROUS OCCASIONS IN SUPPORT OF THE APPLICANT UNION. ACCORDING TO THEIR TESTIMONY POULIOT TOLD THEM THAT IF THE UNION "CAME IN" (I.E. ACQUIRED THE BARGAINING RIGHTS FOR THE EMPLOYEES OF THE RESPONDENT) THE EMPLOYEES WOULD GET BETTER WAGES AND WORKING CONDITIONS, AND MORE SPECIFICALLY THEY WOULD ONLY HAVE TO DO ONE JOB. GERALD CHRISTIANSON'S EVIDENCE ON THE LATTER POINT IS THAT POULIOT SAID THAT IF THEY ONLY HAD ONE JOB, WHEN THE PLANING MILL WAS SHUT DOWN THE EMPLOYEES WOULD NOT HAVE TO WORK IN THE YARD BUT WOULD BE ABLE TO REMAIN AT HOME AND STILL GET PAID. BOTH CHRISTIANSON AND MALENFANT TESTIFIED THAT THE PLANING MILL WAS SHUT DOWN DURING COFFEE BREAKS WHICH LASTED 15 MINUTES BUT THAT ON A FEW OCCASIONS POULIOT SPOKE TO THEM IN FAVOUR OF THE APPLICANT UNION FOR A LONGER PERIOD OF TIME AND THE MILL REMAINED SHUT DOWN DURING THIS ADDITIONAL PERIOD. ACCORDING TO THEIR EVIDENCE THIS SITUATION OCCURRED ON THE MORNING OF APRIL 10, 1973. BOTH OF THE SAID EMPLOYEES FURTHER TESTIFIED THAT THEY THOUGHT THAT POULIOT WAS MAKING HIS PRO-UNION SPEECHES TO THE PLANING MILL EMPLOYEES WITH THE APPROVAL OR PERMISSION OF THE MANAGEMENT OF THE RESPONDENT.

5. EDWARD CHRISTIANSON, THE PRESIDENT OF THE RESPONDENT, TESTIFIED THAT HE NOTICED THAT THE PLANING MILL WAS CLOSED DOWN FOR LONGER THAN USUAL DURING THE COFFEE BREAK ON THE MORNING OF APRIL 10, 1973 AND THAT WHEN HE ENCOUNTERED GERALD CHRISTIANSON AND MALENFANT AT NOON HE INQUIRED OF THEM AS TO THE REASON. CHRISTIANSON TOLD HIM THAT POULIOT HAD BEEN SPEAKING ABOUT THE UNION DURING THE EXTENDED PERIOD WHEN THE MILL WAS CLOSED DOWN. ACCORDING TO EDWARD CHRISTIANSON HE MADE NO REPLY TO THE TWO EMPLOYEES BUT WENT TO POULIOT AND DIRECTED HIM NOT TO MAKE ANY MORE SPEECHES FOR THE UNION. IT APPEARS FROM THE EVIDENCE THAT POULIOT DID NOT SPEAK TO THE PLANING MILL EMPLOYEES AGAIN ABOUT THE APPLICANT UNION PRIOR TO THE TAKING OF THE REPRESENTATION VOTE ON APRIL 17, 1973.

6. ALBERT DASTIE, THE SPOKESMAN OF THE EMPLOYEES OF THE RESPONDENT OPPOSING THE APPLICATION FOR CERTIFICATION, WAS CALLED AS A WITNESS BY HIS COUNSEL. DASTIE TESTIFIED THAT HE ATTENDED A MEETING CALLED BY THE APPLICANT UNION IN THE BASEMENT OF THE CHURCH IN MATTICE ON APRIL 12, 1973, WHICH MEETING WAS OPEN TO ALL EMPLOYEES OF THE RESPONDENT. ACCORDING TO HIM, SOME 21 EMPLOYEES OF THE RESPONDENT ATTENDED. DASTIE'S EVI-

DENCE IS THAT AT THE MEETING THERE WAS GENERAL DISCUSSION AND QUESTIONS ASKED BY THOSE IN ATTENDANCE TO THE REPRESENTATIVES OF THE UNION. DASTIE TESTIFIED THAT POULIOT WHO WAS PRESENT INQUIRED AS TO THE WAGES THE EMPLOYEES COULD EXPECT TO GET IF THE UNION WAS CERTIFIED AND MR. LAFONTAINE, A REPRESENTATIVE OF THE APPLICANT, REFERRED TO THE WAGES BEING PAID AT ANOTHER UNIONIZED PLANING AND SAWMILL OPERATION. ACCORDING TO DASTIE, POULIOT STATED THAT THOSE WERE OLD RATES AND WERE LOWER THAN WHAT HE WAS BEING PAID. POULIOT WENT ON TO SAY THAT IF THE UNION WAS CERTIFIED THE EMPLOYEES WOULD DEMAND THE WAGES WHICH THEY WANTED. DASTIE TESTIFIED THAT IT WAS CLEAR WHEN POULIOT SPOKE AT THE MEETING THAT HE WAS PRO-UNION AND WAS SPEAKING ON HIS OWN BEHALF AND ON BEHALF OF THE EMPLOYEES AND WAS NOT SPEAKING FOR THE RESPONDENT COMPANY.

7. WE FIND IT VERY DIFFICULT TO CONCEIVE THAT WHEN POULIOT SOLICITED THE SUPPORT OF THE PLANING MILL EMPLOYEES FOR THE UNION BY HOLDING OUT TO THEM THE PROSPECTS OF THE BENEFITS WHICH THEY WOULD RECEIVE BY WAY OF IMPROVED WAGES AND WORKING CONDITIONS, IF THE UNION BECAME THEIR BARGAINING AGENT THEY ANY OF THE EMPLOYEES WOULD ASSUME OR BELIEVE THAT HE WAS SPEAKING ON BEHALF OF OR WITH THE APPROVAL OF THE MANAGEMENT OF THE RESPONDENT. FURTHER, EVEN EDWARD CHRISTIANSON, THE PRESIDENT OF THE COMPANY, IN HIS OWN TESTIMONY STATED THAT THE RESPONDENT WAS OPPOSED TO THE APPLICANT ACQUIRING BARGAINING RIGHTS FOR THE EMPLOYEES AND THAT THIS FACT MUST HAVE BEEN OBVIOUS TO MOST OF THE EMPLOYEES. FINALLY, IT IS CLEAR FROM DASTIE'S EVIDENCE AS TO WHAT POULIOT SAID TO THE UNION MEETING ON APRIL 12, WHICH WAS ATTENDED BY 21 EMPLOYEES OF THE RESPONDENT, THAT THE EMPLOYEES COULD NOT POSSIBLY HAVE GAINED OR BEEN LEFT WITH THE IMPRESSION THAT IN SUPPORTING THE UNION, POULIOT, IN ANY WAY, WAS REPRESENTING THE INTERESTS OF THEIR EMPLOYER. ACCORDINGLY, WE REJECT AS BEING WHOLLY IMPLAUSIBLE THE TESTIMONY OF GERALD CHRISTIANSON AND REGIS MALENFANT THAT THEY THOUGHT THAT POULIOT, IN SOLICITING SUPPORT FOR THE APPLICANT IN THE REPRESENTATION VOTE HELD ON APRIL 17, 1973, WAS EXPRESSING EITHER THE DESIRES OF THE RESPONDENT COMPANY OR THAT HE WAS SPEAKING WITH ITS APPROVAL OR PERMISSION.

8. WE THEREFORE REJECT THE SUBMISSION OF COUNSEL FOR THE RESPONDENT AND COUNSEL FOR THE GROUP OF EMPLOYEE OBJECTORS THAT POULIOT UNDULY INFLUENCED OR, STATED ANOTHER WAY, SO INFLUENCED ANY OF THE EMPLOYEES OF THE RESPONDENT THAT THEY WERE NOT CAPABLE OF VOLUNTARILY EXPRESSING THEIR TRUE WISHES IN THE REPRESENTATION VOTE ON APRIL 17, 1973. (SEE MILLWORK AND BUILDING SUPPLIES COMPANY LIMITED CASE, OLRB M.R. JUNE 1968 P. 273, AND ACME RULER COMPANY LIMITED CASE, OLRB M.R. NOVEMBER 1969 P. 592.) ACCORDINGLY, WE ACCEPT THE RESULTS OF THE VOTE TAKEN ON APRIL 17 AND THE REQUEST OF COUNSEL FOR THE RESPONDENT TO SET ASIDE THE VOTE AND DIRECT A NEW REPRESENTATION VOTE IS DENIED.

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DECISION OF BOARD MEMBER W. H. WIGHTMAN: MAY 29, 1973.

I DISSENT.



1. THE EVIDENCE OF THE TWO EMPLOYEES, REGIS MALENFANT AND GERALD CHRISTIANSON, WAS THAT GREGOIRE POULIOT, A FOREMAN IN THE PLANING MILL OF THE RESPONDENT, HAD SPOKEN TO THE FIVE OR SIX EMPLOYEES IN THE PLANING MILL DURING COFFEE BREAKS ON NUMEROUS OCCASIONS FROM THE LATTER PART OF FEBRUARY UP UNTIL APRIL 10, 1973. THE SUBJECT MATTER OF THESE SPEECHES BY POULIOT COULD BEST BE CHARACTERIZED AS STATEMENTS IN FAVOUR OF THE APPLICANT UNION AND HOW THE EMPLOYEES WOULD BENEFIT IF THE UNION WERE TO BE CERTIFIED. IT IS MOST REVEALING, IN MY OPINION, THAT AT NO TIME WAS POULIOT, IN HIS SPEECHES, CRITICAL OF OR ANTAGONISTIC TO THE RESPONDENT COMPANY. GERALD CHRISTIANSON AND REGIS MALENFANT BOTH TESTIFIED THAT THEY BELIEVED POULIOT WAS SPEAKING ON BEHALF OF THEIR EMPLOYER, OR AT THE VERY LEAST, THE COMPANY WAS NOT OPPOSED TO WHAT HE WAS SAYING. THEY BOTH TESTIFIED FURTHER THAT POULIOT'S ACTIONS INFLUENCED THEM IN HOW THEY VOTED ON APRIL 17TH, 1973.

2. IT IS NOT INCONCEIVABLE TO ME, GIVEN THE FACTS, THAT POULIOT SPOKE TO THE EMPLOYEES DURING WORKING TIME ON COMPANY PREMISES AND ON SOME OCCASIONS CAUSED THE PLANING MILL TO REMAIN INACTIVE UNTIL HE HAD COMPLETED HIS SPEECHES THAT EMPLOYEES WOULD BELIEVE THE COMPANY WAS NOT OPPOSED TO HIS ACTIONS AND STATEMENTS. THIS CONDUCT BY POULIOT WOULD AT THE VERY LEAST TEND TO CONFUSE CERTAIN EMPLOYEES ABOUT THE TRUE WISHES OF THE EMPLOYER VIS-A-VIS THE UNION. INDEED, GERALD CHRISTIANSON, BEARING IN MIND THAT HE WAS 18 YEARS OLD AT THE TIME AND A NEPHEW OF THE EDWARD CHRISTIANSON, WAS SO CONFUSED THAT HE COULD NOT RECALL AND PROBABLY STILL DOESN'T RECALL THE ACTUAL NAME OF THE TRADE UNION INVOLVED IN THIS CASE.

3. THERE WAS TESTIMONY BY EDWARD CHRISTIANSON, THE PRESIDENT OF THE RESPONDENT, THAT HE ASSUMED THAT THE EMPLOYEES KNEW THAT THE COMPANY WAS OPPOSED TO THE UNION. HOWEVER, IT IS APPARENT THAT IF A FOREMAN WERE TO SPEAK TO CERTAIN EMPLOYEES AND GIVE THE MISLEADING IMPRESSION THAT THE COMPANY WAS NOT IN FACT OPPOSED TO THE UNION HOW THIS ASSUMPTION WOULD BE NEGATED.

4. IT SEEMS TO ME THAT IN ASSESSING THE TOTALITY OF THE EVIDENCE THE MAJORITY OF THE BOARD HAS APPLIED THE WRONG TEST.

"WE FIND IT VERY DIFFICULT TO CONCEIVE THAT WHEN POULIOT SOLICITED THE SUPPORT OF THE PLANING MILL EMPLOYEES FOR THE UNION BY HOLDING OUT TO THEM THE PROSPECTS OF THE BENEFITS WHICH THEY WOULD RECEIVE BY WAY OF IMPROVED WAGES AND WORKING CONDITIONS, IF THE UNION BECAME THEIR BARGAINING AGENT THAT ANY OF THE EMPLOYEES WOULD ASSUME OR BELIEVE THAT HE WAS SPEAKING ON BEHALF OF OR WITH APPROVAL OF THE MANAGEMENT OF THE RESPONDENT."

THIS STATEMENT IMPLIES THAT THE MAJORITY OF THE BOARD IS INJECTING ITS OWN VIEW, AND A HIGHLY OBJECTIVE ONE, AS TO WHAT CONCLUSION EMPLOYEES SHOULD REACH WHEN SUBJECTED TO PRO-UNION PROPAGANDA BY A FOREMAN. GIVEN

THE REALITIES OF THE EMPLOYMENT SITUATION AND THE EXPERIENCE OF PERSONS LIKE GERALD CHRISTIANSON, THE BOARD SHOULD BE CONCERNED WITH DETERMINING WHAT THE EMPLOYEES ACTUALLY BELIEVED IN A PERSONAL AND SUBJECTIVE SENSE. IN OTHER WORDS, THE TEST TO BE APPLIED SHOULD NOT BE AN OBJECTIVE POLICY-ORIENTED TEST, BUT RATHER, A PRAGMATIC, INDIVIDUALISTIC AND SUBJECTIVE TEST.

5. THERE APPEARS TO ME TO BE A FURTHER REASON WHY THE BOARD HAS DENIED THE REQUEST OF THE RESPONDENT AND CONCLUDED THAT THE ACTIONS OF POULIOT DID NOT UNDULY INFLUENCE THE EMPLOYEES OF THE RESPONDENT SO THAT THEY WERE NOT CAPABLE OF VOLUNTARILY EXPRESSING THEIR TRUE WISHES IN THE REPRESENTATION VOTE ON APRIL 17, 1973. THAT REASON IS THAT THE APPLICANT UNION, FROM THE EVIDENCE, DID NOT DIRECTLY OR ACTIVELY SOLICIT POULIOT TO DO WHAT HE DID. SINCE THERE WAS NO WRONGDOING BY ANY PARTY TO THESE PROCEEDINGS THE BOARD HAS CONCLUDED THAT THE RESULTS OF THE VOTE OF APRIL 17, 1973 SHOULD STAND. I RESPECTFULLY SUBMIT THAT THE QUESTION OF CULPABILITY IS ENTIRELY IRRELEVANT TO A DECISION IN THIS MATTER. IT IS WITHOUT DISPUTE THAT THE APPLICANT UNION ACQUIESCED IN POULIOT'S ACTIVITIES AND BENEFITED FROM THEM. JUST AS IN THE MICRODENT LABORATORIES LTD. CASE BOARD FILE NO. 16580-69-R THE BOARD REFUSED CERTIFICATION WHERE AN EMPLOYER HAD INNOCENTLY ASSISTED THE UNION IN ITS ORGANIZATIONAL CAMPAIGN, SO TOO, HERE THE BOARD SHOULD BE CONCERNED NOT WITH THE MOTIVATION OF POULIOT BUT WHO BENEFITED FROM HIS ACTIONS. IF THAT TEST WERE TO BE APPLIED IN THIS CASE, IN THE INTERESTS OF FAIRNESS, A SECOND VOTE SHOULD BE ORDERED.

3467-72-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. SIVACO (ONTARIO) LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS A. MAIN AND W. H. WIGHTMAN.

APPEARANCES AT THE HEARING: LORNE INGLE AND DARWIN BENSON FOR THE APPLICANT; J. T. HEATHER FOR THE RESPONDENT; E. ROVET AND DOUGLAS HEWITT FOR THE OBJECTORS.

DECISION OF THE BOARD: MAY 29, 1973.

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2. THE APPLICANT ON MARCH 19, 1973 FILED AN APPLICATION FOR CERTIFICATION FOR A UNIT OF EMPLOYEES COMPOSED OF ALL EMPLOYEES OF THE RESPONDENT AT INGERSOLL, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE AND SALES STAFF. THE RESPONDENT PROPOSED THE SAME UNIT WITH THE ADDITIONAL EXCLUSION OF PART-TIME EMPLOYEES. AT THE ORIGINAL HEARING OF THE APPLICATION ON APRIL 9, 1973, HOWEVER, THE PARTIES WERE IN DISAGREEMENT AS TO WHETHER THREE PERSONS WHOSE NAMES APPEARED ON THE LIST OF EMPLOYEES FILED BY THE RESPONDENT IN THE CLASSIFICATION OF WORKING SUPERVISOR WERE MANAGERIAL. THE APPLICANT SUBMITTED THEY EXER-

CISED MANAGERIAL FUNCTIONS AND THE RESPONDENT TOOK THE OPPOSITE POSITION. THE APPLICANT ALSO CHALLENGED THE LIST OF EMPLOYEES FILED BY THE RESPONDENT. THE BOARD ACCORDINGLY APPOINTED AN EXAMINER TO INQUIRE INTO AND REPORT BACK ON THE ABOVE MATTERS.

3. BY TELEGRAM AND LETTER RECEIVED BY THE BOARD ON APRIL 12 AND 13, RESPECTIVELY, SOLICITORS FOR A GROUP OF EMPLOYEE OBJECTORS ALLEGED THAT NO DOLLAR PAYMENT ON ACCOUNT OF INITIATION FEES HAD BEEN PAID BY TWO PERSONS ON WHOSE BEHALF THE APPLICANT HAS SUBMITTED EVIDENCE OF MEMBERSHIP. THE BOARD THEREUPON, FOLLOWING ITS USUAL PRACTICE, MADE ITS OWN PRELIMINARY INQUIRY INTO THE SAID CHARGES. BASED ON SIGNED STATEMENTS GIVEN TO THE BOARD OFFICIAL BY THE TWO PERSONS CONCERNED, THE BOARD LISTED THIS MATTER FOR CONTINUATION OF HEARING TO INQUIRE INTO THE ALLEGATION THAT GERRY WHITE DID NOT PAY THE \$1.00 INITIATION FEE SHOWN ON THE APPLICATION FOR MEMBERSHIP SUBMITTED BY THE APPLICANT ON HIS BEHALF, ON WHICH S.F. FLANNERY WAS SHOWN AS COLLECTOR OF THE FEE, AND NO EXCEPTIONS WERE LISTED TO PARAGRAPH 3 OF THE DECLARATION CONCERNING MEMBERSHIP DOCUMENTS (FORM 8) SIGNED BY PETER G. KENNEDY, WHICH WAS FILED IN SUPPORT OF THE APPLICANT'S MEMBERSHIP EVIDENCE. THE BOARD ON ITS OWN INITIATIVE SUMMONED GERALD WHITE, SHAWN FLANNERY AND PETER KENNEDY WHOM THE BOARD BELIEVED HAD KNOWLEDGE OF THE FACTS TO TESTIFY AT A HEARING SCHEDULED ON MAY 22, 1973 FOR THE PURPOSE OF INQUIRING INTO THE "NON-PAY" ALLEGATION. THE BOARD ALSO ADVISED THE PARTIES THAT IT WOULD ENTERTAIN THE REPRESENTATIONS OF THE PARTIES ON THE REPORT OF THE EXAMINER DATED MAY 1, 1973.

4. AT THE HEARING ON MAY 22, 1973, THE BOARD CALLED WHITE, FLANNERY, KENNEDY AND ALSO DARWIN BENSON, THE REPRESENTATIVE OF THE APPLICANT IN CHARGE OF THE ORGANIZATIONAL CAMPAIGN AMONG THE EMPLOYEES OF THE RESPONDENT, AS WITNESSES AND CONDUCTED AN INQUIRY OF THEM CONCERNING THEIR KNOWLEDGE AS TO THE MEMBERSHIP CARD SUBMITTED ON BEHALF OF WHITE AND/OR THE FORM 8 FILED WITH RESPECT TO THE APPLICANT'S MEMBERSHIP EVIDENCE. ALL PARTIES TO THE PROCEEDING WERE AFFORDED AN OPPORTUNITY TO CROSS-EXAMINE EACH OF THE FOUR WITNESSES. NONE OF THE PARTIES TO THE PROCEEDING, HOWEVER, CALLED ANY OTHER PERSONS TO GIVE TESTIMONY RELATING TO THE "NON-PAY" ISSUE.

5. THERE ARE BOTH MAJOR AND MINOR DISCREPANCIES BETWEEN THE EVIDENCE OF THE WITNESSES VIS-À-VIS THE TESTIMONY OF EACH OTHER AND IN THE CASE OF FLANNERY AND BENSON THERE IS A CONFLICT IN THEIR TESTIMONY OF SUCH CRUCIAL IMPORTANCE AS TO CAST DOUBT ON VIRTUALLY ALL OF THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT. SOME OF THE DISCREPANCIES MAY BE ATTRIBUTED TO THE FACT THAT THE WITNESSES WERE TESTIFYING AS TO EVENTS WHICH OCCURRED TWO OR MORE MONTHS PRIOR TO THE BOARD HEARING AND THAT THE EVENTS AT THE TIME WERE OF NO GREAT SIGNIFICANCE TO THEM. ACCORDINGLY, THEY UNDERSTANDABLY PERHAPS HAD AN UNCERTAIN OR UNCLEAR RECOLLECTION OF THEM. WE ARE NOT ABLE, HOWEVER, TO ATTRIBUTE SOME OF THE MORE MARKED EVIDENTIARY DISCREPANCIES TO THESE REASONS AND ESPECIALLY THE DIRECT CONFLICT BETWEEN THE EVIDENCE OF FLANNERY AND BENSON REFERRED TO ABOVE WHICH WILL BE DEALT WITH SUBSEQUENTLY IN THIS DECISION.

6. FLANNERY AND WHITE BOTH TESTIFIED THAT THE FORMER HAD APPROACHED



THE LATTER ON A NUMBER OF OCCASIONS IN THE FIRST HALF OF MARCH OF THIS YEAR, INCLUDING MARCH 15TH, TO SIGN AN APPLICATION FOR MEMBERSHIP IN THE APPLICANT TRADE UNION. DURING THIS PERIOD BOTH FLANNERY AND WHITE WHO WERE EMPLOYEES OF THE RESPONDENT WERE WORKING ON THE SAME AFTERNOON SHIFT. AT THE "BREAK" IN THE SHIFT ON MARCH 15, 1973 WHITE AGREED TO SIGN A MEMBERSHIP CARD AND THEY ARRANGED TO MEET A FLANNERY'S CAR WHICH WAS IN THE PARKING LOT OF THE RESPONDENT AT THE END OF THE SHIFT. THE TWO MEN MET SHORTLY AFTER MIDNIGHT. THERE ARE MINOR DISCREPANCIES OF NO GREAT SIGNIFICANCE AS TO EXACTLY WHAT TRANSPIRED AND THE SEQUENCE OF EVENTS WHEN WHITE AND FLANNERY WERE TOGETHER IN FLANNERY'S CAR FOR A PERIOD OF APPROXIMATELY TWO MINUTES. IN ESSENCE, HOWEVER, WHITE SIGNED AN APPLICATION FOR MEMBERSHIP AND UPON BEING ASKED BY FLANNERY FOR A \$1.00 INITIATION FEE WHITE STATED HE DID NOT HAVE ANY MONEY. FLANNERY THEREUPON PRODUCED A DOLLAR OF HIS OWN FOR THE INITIATION FEE AND ADVISED WHITE THAT HE OWED HIM (FLANNERY) A DOLLAR.

7. THE EVIDENCE OF FLANNERY IS THAT WHEN HE HAD SIGNED WHITE INTO MEMBERSHIP IN THE APPLICANT HE GAVE HIM A RECEIPT FOR THE ONE DOLLAR INITIATION FEE. WHITE, ON THE OTHER HAND, TESTIFIED THAT HE WAS NOT GIVEN A RECEIPT. THE MOST SERIOUS DISCREPANCY IN THEIR EVIDENCE, HOWEVER, IS THAT FLANNERY TESTIFIED THAT HE ASKED WHITE TO REPAY THE DOLLAR LOAN ON A NUMBER OF OCCASIONS, AND MORE PARTICULARLY, ON EACH PAY DAY AND JUST BEFORE FLANNERY LEFT THE EMPLOY OF THE RESPONDENT AT THE END OF APRIL, BUT THAT WHITE STILL HAD NOT GIVEN HIM (FLANNERY) A DOLLAR. ACCORDING TO WHITE, FLANNERY AT NO TIME AFTER HE SIGNED THE APPLICATION FOR MEMBERSHIP EVER APPROACHED HIM AND ASKED HIM TO PAY THE DOLLAR ON ACCOUNT OF THE INITIATION FEE WHICH FLANNERY HAD LOANED HIM.

8. NO EVIDENCE WAS ADDUCED OR EXPLANATION WAS GIVEN BY FLANNERY AS TO WHAT WHITE SAID WHEN HE (FLANNERY) ASKED HIM FOR THE REPAYMENT OF THE DOLLAR OR WHAT EXPLANATION OR EXCUSE WHITE GAVE FOR NOT REPAYING THE DOLLAR. ACCORDING TO WHITE HE WAS QUITE PREPARED TO MAKE THE PAYMENT BUT HAD NOT DONE SO SIMPLY BECAUSE FLANNERY HAD NEVER ASKED HIM FOR THE DOLLAR. THE LOGIC OF THE SITUATION IN OUR VIEW FAVOURS THE TESTIMONY OF WHITE ON THIS IMPORTANT MATTER. WE ACCORDINGLY PREFER AND ACCEPT WHITE'S EVIDENCE OVER THAT OF FLANNERY.

9. WE WOULD TURN NOW TO THE TESTIMONY OF BENSON AND KENNEDY. THESE TWO WITNESSES WERE IN SUBSTANTIAL AGREEMENT THAT BENSON HAD TELEPHONED KENNEDY, WHO IS A LAWYER IN THE EMPLOY OF THE ADMINISTRATIVE DEPARTMENT OF THE APPLICANT AT ITS NATIONAL OFFICE IN TORONTO, AND ADVISED HIM THAT HE HAD SUFFICIENT EVIDENCE OF MEMBERSHIP AMONG THE EMPLOYEES OF THE RESPONDENT FOR AN APPLICATION FOR CERTIFICATION TO BE MADE TO THIS BOARD. KENNEDY MADE CERTAIN ROUTINE INQUIRIES CONCERNING THE BARGAINING UNIT TO BE APPLIED FOR AND AS TO WHETHER A PRE-HEARING VOTE WOULD BE REQUESTED AND HE ALSO INSTRUCTED BENSON TO MAIL THE SIGNED MEMBERSHIP CARDS TO THE NATIONAL OFFICE.

10. ACCORDING TO BENSON THIS WAS THE SOLE TELEPHONE CONVERSATION WHICH HE HAD WITH KENNEDY. IN HIS EXAMINATION-IN-CHIEF BY THE BOARD

BENSON DID NOT MENTION WHETHER KENNEDY HAD MADE ANY INQUIRIES AS TO WHETHER THE CARDS HAD BEEN PROPERLY SIGNED AND THE INITIATION FEE COLLECTED ON EACH OF THE CARDS. IN CROSS-EXAMINATION, HOWEVER, WHEN BENSON WAS ASKED WHETHER SUCH INQUIRIES WERE MADE DURING HIS TELEPHONE CONVERSATION WITH KENNEDY HE REPLIED IN THE AFFIRMATIVE. IN CONTRAST TO THE EVIDENCE OF BENSON, KENNEDY TESTIFIED THAT SUBSEQUENT TO THE MAKING OF THE INSTANT APPLICATION FOR CERTIFICATION ON MARCH 19, 1973 AND THE TIME WHEN HE COMPLETED AND SIGNED THE FORM 8, DECLARATION CONCERNING MEMBERSHIP DOCUMENTS, ON MARCH 30, 1973, HE HAD SOME SEVEN TO TEN TELEPHONE CONVERSATIONS WITH BENSON AS A RESULT OF PROBLEMS THAT AROSE DURING THAT PERIOD CONCERNING THE APPLICATION. ACCORDING TO KENNEDY HE MADE THE PROPER INQUIRIES OF BENSON WITH REGARD TO THE EVIDENCE OF MEMBERSHIP DURING ONE OF THESE LATTER CONVERSATIONS, AFTER MEMBERSHIP CARDS HAD BEEN RECEIVED IN HIS OFFICE AND SOME TIME SHORTLY PRIOR TO COMPLETING THE FORM 8.

11. WE WOULD MENTION HERE THAT THERE WAS FILED WITH THE BOARD A STATEMENT OF DESIRE EXPRESSING OPPOSITION TO THE APPLICATION SIGNED BY 22 PERSONS PURPORTING TO BE EMPLOYEES OF THE RESPONDENT. THE DATES SHOWN OPPOSITE THE NAMES ARE EITHER MARCH 21, 22 OR 23, 1973. THE SAID STATEMENT OF DESIRE WAS SENT TO THE BOARD BY COVERING LETTER DATED MARCH 23 AND WAS RECEIVED BY THE BOARD ON MARCH 27, 1973. THE TERMINAL DATE FOR THE APPLICATION WAS MARCH 29, 1973. BY TELEGRAMS DATED APRIL 3 AND 5, 1973, KENNEDY FILED CHARGES ALLEGING MANAGEMENT SUPPORT FOR THE STATEMENT OF DESIRE AND MORE PARTICULARLY ALLEGED INTER ALIA THAT JOHN FORTNER, A FOREMAN IN THE EMPLOY OF THE RESPONDENT, HAD CALLED A MEETING OF THE EMPLOYEES ON MARCH 21, 1973 AND HAD MADE A SPEECH DURING WORKING HOURS ATTACKING THE APPLICANT AND EXPRESSING OPPOSITION TO THE APPLICATION. FORTNER, BY THE WAY, IS ONE OF THE PERSONS CLASSIFIED AS A WORKING SUPERVISOR OVER WHOM THE PARTIES WERE IN DISPUTE WITH RESPECT TO HIS EMPLOYMENT STATUS.

12. IN LIGHT OF THE FILING OF THE STATEMENT OF DESIRE IN OPPOSITION TO THE APPLICATION AND THE SUBSEQUENT CHARGES FILED BY KENNEDY, HIS TESTIMONY THAT HE HAD NUMEROUS TELEPHONE CONVERSATIONS WITH BENSON, WHO WAS THE UNION REPRESENTATIVE IN CHARGE OF THE ORGANIZING CAMPAIGN AMONG THE EMPLOYEES OF THE RESPONDENT, DURING THE TEN DAY PERIOD FOLLOWING THE MAKING OF THE APPLICATION SEEMS MORE REASONABLE THAN THE TESTIMONY OF BENSON THAT HE HAD ONLY ONE CONVERSATION WITH KENNEDY A COUPLE OF DAYS PRIOR TO MAKING THE APPLICATION. FURTHER, ACCORDING TO KENNEDY, THE PROCEDURE FOLLOWED BY THE APPLICANT WAS THAT ALL MEMBERSHIP CARDS FILED WITH HIS OFFICE IN CONNECTION WITH A CERTIFICATION APPLICATION WERE FIRST CHECKED FOR ANY INACCURACIES, ERRORS OR DISCREPANCIES, PRIOR TO HIS MAKING ANY INQUIRIES CONCERNING THEM. THEREFORE, IT SEEMS MORE LOGICAL THAT HE WOULD WAIT TO MAKE INQUIRIES OF BENSON CONCERNING THE EVIDENCE OF MEMBERSHIP WHICH HE SUBMITTED UNTIL AFTER THE CARDS WERE CHECKED. IN THE RESULT WE PREFER AND ACCEPT THE EVIDENCE OF KENNEDY OVER THAT OF BENSON.

13. WE WOULD MENTION HERE THAT ALL OF THE MEMBERSHIP CARDS SUBMITTED BY THE APPLICANT BEAR THE FOLLOWING PRINTED STATEMENT AT THE BOTTOM. "I

HEREBY CERTIFY THAT I HAVE RECEIVED THE SUM OF \$1.00 ON ACCOUNT OF INITIATION FEES FOR THE UNITED STEELWORKERS OF AMERICA FROM THE PERSON WHOSE SIGNATURE APPEARS ABOVE", BELOW WHICH APPEARS THE SIGNATURE OF THE PERSON SHOWN AS THE COLLECTOR. WHILE WE ACCEPT KENNEDY'S TESTIMONY THAT HE MADE ORAL INQUIRIES OF BENSON, BASED ON THE BOARD'S DECISION IN THE CHEMICAL EQUIPMENT FABRICATORS LTD. CASE, OLRB M.R. FEBRUARY 1967 P. 886, KENNEDY WAS IN A POSITION TO SATISFY THE REQUIREMENT RELATING TO THE EVIDENCE OF MEMBERSHIP SET OUT IN PARAGRAPH 3 OF FORM 8 SOLELY ON THE BASIS OF THE ABOVE QUOTED STATEMENT ON EACH CARD ALL OF WHICH BORE THE SIGNATURE OF A COLLECTOR.

14. FINALLY, WE WOULD DEAL WITH THE TESTIMONY OF FLANNERY AND BENSON VIS-À-VIS EACH OTHER. THREE MEMBERSHIP CARDS WERE SUBMITTED TO THE BOARD BEARING THE SIGNATURE OF FLANNERY AS COLLECTOR. TWO CARDS ARE DATED MARCH 15 AND ONE OF THE TWO IS THE CARD SUBMITTED FOR WHITE. YET ACCORDING TO FLANNERY HE ONLY SIGNED TWO PERSONS INTO MEMBERSHIP IN THE APPLICANT AND GAVE THE TWO CARDS CONCERNED TO BENSON ON TWO SEPARATE OCCASIONS, ONE BEING WHITE'S CARD ON THE MORNING OF APRIL 17, 1973. BENSON FOR HIS PART TESTIFIED THAT FLANNERY GAVE HIM THREE SIGNED MEMBERSHIP CARDS, BUT THAT ONE WAS DEFECTIVE IN THAT THE PERSON CONCERNED HAD FAILED TO SIGN HIS SURNAME ON THE CARD. ACCORDING TO BENSON HE DID NOT SUBMIT THIS CARD BUT LATER SIGNED THE SAME PERSON INTO MEMBERSHIP HIMSELF WITH HIS CORRECT NAME ON THE CARD. HOWEVER, BASED ON THE EVIDENCE OF MEMBERSHIP AND CORRESPONDENCE ON FILE WITH THE BOARD, WE ARE ABLE TO IDENTIFY THE CARD IN QUESTION, AND THAT CARD BEARS THE NAME OF FLANNERY RATHER THAN BENSON AS COLLECTOR.

15. THE EVIDENCE OF FLANNERY IS THAT HE MET WITH BENSON ON KING STREET OUTSIDE THE INGERSOLL INN ON THE MORNING OF MARCH 19, 1973 AND GAVE WHITE'S CARD TO BENSON ON THAT OCCASION TOGETHER WITH A DOLLAR. ACCORDING TO FLANNERY, ALTHOUGH BENSON MADE NO INQUIRIES OF HIM CONCERNING THE CARD, FLANNERY TOLD BENSON THAT HE (FLANNERY) HAD LOANED WHITE THE \$1.00 INITIATION FEE AND THAT WHITE HAD NOT YET REPAID IT. FLANNERY'S TESTIMONY IS THAT WHEN HE SO ADVISED BENSON OF THE LOAN THE LATTER WAS NOT VERY PLEASED. BENSON ON THE OTHER HAND TESTIFIED THAT HE MET WITH FLANNERY IN THE FORMER'S HOTEL ROOM ON THE MORNING OF MARCH 19, 1973 WHERE FLANNERY GAVE HIM WHITE'S CARD AND A DOLLAR. BENSON COULD NOT RECALL WHETHER HE MADE ANY INQUIRIES OF FLANNERY CONCERNING THE CARD, BUT ACCORDING TO BENSON'S EVIDENCE FLANNERY DID NOT ADVISE HIM (BENSON) THAT HE (FLANNERY) HAD LOANED WHITE THE \$1.00 INITIATION FEE.

16. IN VIEW OF THE FINDINGS WITH RESPECT TO THE EVIDENCE OF FLANNERY VIS-À-VIS THE EVIDENCE OF WHITE AND THAT OF BENSON VIS-À-VIS THE EVIDENCE OF KENNEDY, ALL OF THE TESTIMONY OF FLANNERY AND BENSON IS SUSPECT. COMPOUNDING THE SITUATION IS THE FACT THAT THEIR OWN EVIDENCE VIS-À-VIS EACH OTHER IS RIDDLED WITH DISCREPANCIES. MOREOVER, THERE IS A TOTAL CONFLICT IN THEIR TESTIMONY ON A VITAL POINT, NAMELY, WHETHER OR NOT FLANNERY TOLD BENSON ABOUT THE LOAN OF THE INITIATION FEE WHICH HE HAD MADE TO WHITE ON THE LATTER'S MEMBERSHIP CARD. FURTHER, BENSON IS A RESPONSIBLE PAID OFFICIAL OF THE APPLICANT AND WAS IN CHARGE OF THE ORGANIZING CAMPAIGN. MOREOVER, BENSON SIGNED 22 OF THE MEMBERSHIP CARDS SUBMITTED IN SUPPORT



OF THE APPLICATION AS COLLECTOR OF THE \$1.00 INITIATION FEE. FLANNERY, WHILE ONLY A RANK AND FILE EMPLOYEE, APPEARS TO HAVE BEEN VERY ACTIVE IN THE ORGANIZING CAMPAIGN AND AS HAS BEEN STATED SIGNED THREE OF THE MEMBERSHIP CARDS AS COLLECTOR. THE TWO REMAINING CARDS OUT OF THE 27 SUBMITTED BY THE APPLICANT TO THE BOARD BEAR THE SIGNATURES OF TWO OTHER PERSONS AS COLLECTORS.

17. AS WAS STATED IN THE WEBSTER AIR EQUIPMENT LIMITED CASE 58 CLLC 1716, SINCE THE BOARD IS COMPELLED TO RELY TO SUCH AN EXTENT ON EVIDENCE OF MEMBERSHIP IN A CERTIFICATION APPLICATION, WHICH BY THE VERY NATURE OF THINGS IS NOT SUBJECT TO EXAMINATION BY THE PARTIES TO THE PROCEEDINGS, THE BOARD MUST BE VERY CIRCUMSPECT IN ACCEPTING THE EVIDENCE AND IT MUST INSIST ON THE HIGHEST STANDARDS OF INTEGRITY ON THE PART OF THOSE WHO SUBMIT SUCH EVIDENCE. ANY ATTEMPT TO MISLEAD THE BOARD OR ANY FAILURE TO MAKE FULL DISCLOSURE OF ALL MATERIAL FACTS MUST WEIGH HEAVILY AGAINST THE APPLICANT. IN OTHER WORDS, WHEN THE EVIDENCE OF MEMBERSHIP OF AN APPLICANT TRADE UNION HAS BEEN CHALLENGED IN THE MANNER IN WHICH IT HAS IN THE INSTANT CASE, THERE IS A HEAVY ONUS ON THE APPLICANT TO SATISFY THE BOARD THAT ITS EVIDENCE OF MEMBERSHIP MEETS THE REQUIREMENTS OF THE ACT AND THE BOARD'S RULES OF PROCEDURE AND REGULATIONS.

18. IN THE CASE BEFORE US, THE MEMBERSHIP CARD SUBMITTED BY THE APPLICANT FOR GERALD WHITE CLEARLY DOES NOT MEET THE ABOVE REQUIREMENTS AND MUST BE REJECTED. EVEN MORE SERIOUS, HOWEVER, IS THAT HAVING REGARD TO ALL OF THE DISCREPANCIES AND CONFLICTS IN THE TESTIMONY OF BOTH FLANNERY AND BENSON IN RELATION TO EACH OTHER'S EVIDENCE AND THAT OF THE TWO OTHER WITNESSES, WE ARE IMPELLED TO CONCLUDE THAT WE ARE NOT ABLE TO PLACE RELIANCE ON ANY OF THEIR TESTIMONY. IN SHORT, WE DO NOT FIND THE EVIDENCE OF EITHER FLANNERY OR BENSON TO BE CREDIBLE. THIS BEING SO, THE APPLICANT HAS FAILED TO DISCHARGE THE ONUS UPON IT. IN THE RESULT, WE ARE NOT PREPARED TO ACCEPT ANY OF THE MEMBERSHIP CARDS SUBMITTED BY THE APPLICANT UPON WHICH EITHER FLANNERY OR BENSON ARE SHOWN AS THE COLLECTOR OF THE INITIATION FEE.

19. IN VIEW OF THE ABOVE FINDING, IT IS NOT NECESSARY FOR THE BOARD TO MAKE ANY DETERMINATION WITH RESPECT TO THE REPORT OF THE EXAMINER OR TO INQUIRE INTO THE STATEMENT OF DESIRE OR THE CHARGES FILED BY THE APPLICANT RELATING TO THE STATEMENT.

20. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT LESS THAN THIRTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN ANY BARGAINING UNIT FOUND TO BE APPROPRIATE BY THE BOARD, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON MARCH 28, 1973, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

21. THE APPLICATION ACCORDINGLY IS DISMISSED.

3551-73-R: GENERAL TRUCK DRIVERS LOCAL 938 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. CHARTERWAYS CO. LIMITED (RESPONDENT).

- AND -

3552-73-R: GENERAL TRUCK DRIVERS LOCAL 938 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. CHARTERWAYS CO. LIMITED (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS A. MAIN AND J. E. C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: I. J. THOMSON AND A. LEFORT FOR THE APPLICANT; C. G. RIGGS, P. J. STRAIN AND IAN TURNER FOR THE RESPONDENT.

DECISION OF THE BOARD: MAY 30, 1973.

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2. THE APPLICANT, IN BOARD FILE NO. 3551-73-R, HAS APPLIED TO THE BOARD FOR CERTIFICATION AS BARGAINING AGENT OF ALL EMPLOYEES OF THE RESPONDENT AT BOWMANVILLE WITH THE EXCEPTION OF, AMONG OTHERS, EMPLOYEES REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK. AT THE SAME TIME, THE APPLICANT, IN BOARD FILE NO. 3552-73-R, APPLIED FOR CERTIFICATION AS BARGAINING AGENT FOR ALL "PART TIME" EMPLOYEES OF THE RESPONDENT AT BOWMANVILLE WITH CERTAIN EXCEPTIONS NOT HERE RELEVANT.

3. THE RESPONDENT IN EACH CASE RAISED WITH THE BOARD THE QUESTION OF ITS JURISDICTION TO DEAL WITH BOTH APPLICATIONS ON THE GROUNDS THAT, FOR LABOUR RELATIONS PURPOSES, THE OPERATIONS OF THE RESPONDENT MIGHT FALL WITHIN THE EXCLUSIVE JURISDICTION OF THE PARLIAMENT OF CANADA. BOTH APPLICATIONS WERE HEARD AT THE SAME TIME.

4. IT IS QUITE CLEAR ON THE EVIDENCE THAT THE UNDERTAKING OF THE RESPONDENT AT BOWMANVILLE INVOLVES THE OPERATION OF BUSES UNDER CHARTER TO POINTS IN THE PROVINCE OF QUEBEC AND THE STATE OF NEW YORK IN THE UNITED STATES OF AMERICA. THIS PORTION OF THE RESPONDENT'S UNDERTAKING IS MANNED BY THE FULL TIME EMPLOYEES OF THE RESPONDENT. THE UNDERTAKING OF THE RESPONDENT ALSO INVOLVES THE OPERATION OF THE LOCAL SCHOOL BUSES. THESE BUSES ARE MANNED BY CERTAIN EMPLOYEES WHO ARE EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK. THE FULL TIME EMPLOYEES COMPRISE THOSE WHO COMBINE PART TIME SCHOOL BUS DRIVING WITH INTERPROVINCIAL AND INTERNATIONAL DRIVING.

5. THERE WAS A SUGGESTION PUT FORWARD THAT IF THE BOARD SHOULD FIND THAT THE FULL TIME EMPLOYEES WHO DROVE THE CHARTERED BUSES OUTSIDE THE PROVINCE, FELL WITHIN THE JURISDICTION OF THE PARLIAMENT OF CANADA AND THUS OUTSIDE THE JURISDICTION OF THIS BOARD, THAT THE BOARD NEVERTHELESS HAD JURISDICTION WITH RESPECT TO THE PART TIME EMPLOYEES WHOSE ACTIVITIES WERE CONTAINED ENTIRELY WITHIN THE PROVINCE. THE BOARD IS UNABLE TO AGREE WITH THE FOREGOING SUGGESTION. IN THE OPINION OF THE BOARD, THE PROPER

PROCEDURE IS TO LOOK AT THE INTEGRATED TRANSPORTATION UNDERTAKING OF THE RESPONDENT IN DETERMINING THE QUESTION OF JURISDICTION. (SEE STEVEDORING COMPANY CASE, [1955] 3 D.L.R. 721).

6. WITH THE FOREGOING IN MIND AND HAVING REGARD TO THE TANK TRUCK TRANSPORT LTD. CASE, 25 D.L.R. (2ND) 161 AND LIQUID CARGO LINES LTD. CASE, 46 D.L.R. (2ND) 700, THE BOARD FINDS THAT IT IS WITHOUT JURISDICTION TO ENTERTAIN EITHER OF THE APPLICATIONS UNDER CONSIDERATIONS, AND THEY ARE EACH ACCORDINGLY DISMISSED.

3364-72-R: UNITED INDUSTRIAL WORKERS LOC. 2A AFFILIATED WITH UNITED BRICK AND CLAY WORKERS OF AMERICA AFL-CIO (APPLICANT) V. PACIFIC PLATING LIMITED (RESPONDENT).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS H.J.F. ADE AND E. BOYER.

APPEARANCES AT THE HEARING: HAROLD F. CALEY AND TON MARCANTONIO FOR THE APPLICANT; R.C. FILION, H. WEINBERG AND K. ALEXANDER FOR THE RESPONDENT.

DECISION OF THE BOARD:

MAY 30, 1973.

1. IN THIS MATTER THERE WAS A PRE-HEARING REPRESENTATION VOTE REQUESTED BY THE APPLICANT, BUT BECAUSE THE APPLICANT HAD NOT PROVEN ITS STATUS THE BOARD DIRECTED THE BALLOT BOX CONTAINING ALL THE BALLOTS CAST IN THE REPRESENTATION VOTE BE SEALED AND NOT COUNTED PENDING A FURTHER DIRECTION, AND THE REGISTRAR WAS DIRECTED TO LIST THIS MATTER FOR HEARING.

2. PRIOR TO THIS MATTER COMING ON FOR HEARING THERE WERE OTHER ISSUES RAISED SURROUNDING THE REPRESENTATION VOTE. HOWEVER, AT THE HEARING, THE ONLY ISSUE THAT WAS DEALT WITH WAS THE QUESTION OF THE APPLICANT'S STATUS AS A TRADE UNION. AFTER HEARING EVIDENCE AND ARGUMENT WITH RESPECT TO THE APPLICANT'S STATUS, THE OTHER MATTERS WERE ADJOURNED PENDING A DETERMINATION ON THE STATUS OF THE APPLICANT.

3. THE APPLICANT CLAIMS THAT IT IS A LOCAL AFFILIATED WITH THE UNITED BRICK AND CLAY WORKERS OF AMERICA AFL-CIO (HEREINAFTER REFERRED TO AS "UNITED BRICK"). IT FILED WITH THIS BOARD A COPY OF THE BY-LAWS OF UNITED BRICK AND A COPY OF THE CONSTITUTION AND BY-LAWS OF THE APPLICANT LOCAL, TOGETHER WITH TWO COLLECTIVE AGREEMENTS FROM THE UNITED STATES TO WHICH THE APPLICANT WAS ALLEGEDLY ONE OF THE SIGNATORIES, AND A CHARTER WHICH THE APPLICANT CLAIMS WAS ISSUED TO IT BY UNITED BRICK. THIS CHARTER, HOWEVER, DESCRIBES THE GRANTOR OF THE CHARTER AS THE UNITED INDUSTRIAL WORKERS OF AMERICA, AND IN THE BODY OF THE CHARTER IT APPEARS THAT THE UNITED INDUSTRIAL WORKERS OF AMERICA IS THE UNION WHICH GAVE BIRTH TO THE APPLICANT. WHEN THE INTERNATIONAL BUSINESS REPRESENTATIVE OF THE APPLICANT WAS EXAMINED, HE ADMITTED THAT THERE WAS NO SUCH ENTITY AS THE UNITED INDUSTRIAL WORKERS OF AMERICA, BUT, HE SUGGESTED, THAT THE CHARTER WAS VALID BECAUSE IT HAD REALLY BEEN GRANTED BY UNITED BRICK.



4. IN ARGUMENT, COUNSEL FOR THE RESPONDENT COMPANY SUBMITTED THAT THE CHARTER WAS A NULLITY BECAUSE IT FLOWED FROM A NON-EXISTENT ENTITY, WHEREAS COUNSEL FOR THE APPLICANT STATED THAT ANY DEFECT IN THE BODY OF THE CHARTER WAS REMEDIED BY THE SEAL PLACED AT THE BOTTOM OF THE CHARTER WHICH IS THE SEAL OF UNITED BRICK.

5. THE DECISION OF THE ONTARIO COURT OF APPEAL IN RE CSAO NATIONAL (INC.) AND OAKVILLE TRAFALGAR MEMORIAL HOSPITAL ASSOCIATION [1972] 26 D.L.R. (3d) 63; [1972] 2 O.R. 498, RESPECTING TRADE UNION STATUS SEEMS TO REQUIRE THAT THIS BOARD RELAX SOME OF THE QUALIFICATIONS WHICH IT HAD PREVIOUSLY DEVELOPED IN REQUIRING A TRADE UNION TO PROVE ITS STATUS; HOWEVER, IT STILL REMAINS NECESSARY FOR AN APPLICANT, IN ORDER TO PROVE THAT IT HAS THE STATUS OF A TRADE UNION, TO ADOPT A MINIMUM OF ORDER IN CONSTITUTING ITSELF.

6. THE BOARD HAS RECOGNIZED THAT THERE ARE MANY WELL KNOWN INTERNATIONAL AND NATIONAL UNIONS AND HAS REQUIRED A FILING OF A COPY OF THEIR BY-LAWS TOGETHER WITH THE CHARTER IN ORDER TO PROVE THAT THE LOCAL APPLYING FOR CERTIFICATION WAS DULY AND PROPERLY BROUGHT INTO EXISTENCE IN ACCORDANCE WITH THE BY-LAWS OF THE INTERNATIONAL OR NATIONAL. THE BOARD DOES NOT REQUIRE FIRST HAND EVIDENCE WITH RESPECT TO THESE BY-LAWS OR CONSTITUTIONS BECAUSE WE HAVE TAKEN OFFICIAL NOTICE OF THE EXISTENCE OF THESE TRADE UNIONS AS WELL KNOWN FACTS OF INDUSTRIAL LIFE, AND THEREFORE WE HAVE ACCEPTED THE MERE FILING OF BY-LAWS AND CONSTITUTIONS OF THE INTERNATIONAL OR NATIONAL AS PRIME FACIE EVIDENCE OF THEIR EXISTENCE. IN ORDER FOR A LOCAL TO SHOW THAT IT PROPERLY CAME INTO EXISTENCE IT IS USUAL TO MERELY ADDUCE EVIDENCE OF THE CHARTER TO SHOW THAT AN APPLICANT APPLYING FOR CERTIFICATION IS A PROPER "OFF-SHOOT" OF THE INTERNATIONAL OR NATIONAL UNION. IN THIS CASE THE CHARTER PRESENTED FAILS TO COMPLY WITH THE VERY MINIMUM STANDARDS THAT ARE NECESSARY. THE GRANTOR OF THE CHARTER IS ADMITTEDLY A NON-EXISTENT ENTITY AND IS THEREFORE DEVOID OF ANY POWER OR AUTHORITY TO CONFER UPON THE APPLICANT THE NECESSARY STATUS OF A TRADE UNION LOCAL FOR THE PURPOSES OF THIS ACT. A CAREFUL READING OF THE CHARTER INDICATES THAT BOTH PROCEDURALLY AND SUBSTANTIVALLY THAT THE APPLICANT HAS DERIVED ITS STATUS FROM AN ALLEGED PARENT WHICH IS A NULLITY, AND WE ARE NOT SATISFIED THAT THE SEAL PLACED ON THE BOTTOM OF THE CHARTER IS SUFFICIENT TO REMEDY THE OBVIOUS DEFECTS OF THIS CHARTER WHICH GO TO THE VERY ROOT OF THE APPLICANT'S EXISTENCE.

7. FOR THESE REASONS WE ARE NOT PREPARED TO GRANT THE APPLICANT STATUS AS A TRADE UNION AND THE APPLICATION IS THEREFORE DISMISSED.

2405-72-R: HOTEL AND RESTAURANT EMPLOYEES UNION, LOCAL 743, WINDSOR, ONTARIO, AFFILIATED WITH HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION; AFL-CIO (APPLICANT) v. McDONALD'S RESTAURANTS OF CANADA LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: T.E. ARMSTRONG AND K. BROWN FOR THE APPLICANT; B.M.W. PAULIN, Q.C. AND J.B. NOONAN FOR THE RESPONDENT; LOUIE W. MELE AND TERRY VEILLEUX FOR THE GROUP OF EMPLOYEES.

DECISION OF THE BOARD:

MAY 30, 1973.

1. THIS IS AN APPLICATION FOR CERTIFICATION IN WHICH THE APPLICANT ORIGINALLY CLAIMED TO REPRESENT ALL THE EMPLOYEES OF THE RESPONDENT AT 883 HURON CHURCH LINE, WINDSOR, ONTARIO, SAVE AND EXCEPT THE MANAGER. THE RESPONDENT REPLIED TO THE APPLICATION AND ALLEGED THAT THE APPROPRIATE BARGAINING UNIT WAS ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT ASSISTANT MANAGERS, PERSONS ABOVE THE RANK OF ASSISTANT MANAGER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD.

2. THE RESPONDENT HAS THREE LOCATIONS AT WINDSOR AND IN SUBSTANCE WAS CLAIMING THAT IF THERE WAS AN APPROPRIATE BARGAINING UNIT THAT IT SHOULD INCLUDE ALL THREE LOCATIONS AT WINDSOR, WHEREAS THE APPLICANT WAS CLAIMING THAT THE ONE LOCATION AT 883 HURON CHURCH LINE WAS AN APPROPRIATE BARGAINING UNIT BY ITSELF.

3. AT THE FIRST HEARING THERE WERE A NUMBER OF MATTERS WHICH WERE PUT IN ISSUE. THE FIRST WAS THE DESCRIPTION OF THE BARGAINING UNIT AND WHETHER ONE LOCATION IS APPROPRIATE OR WHETHER ALL THREE LOCATIONS ARE APPROPRIATE. THE SECOND ISSUE IS CONCERNED WITH THE LOWEST LEVEL OF MANAGEMENT AND PARTICULARLY WITH THE ISSUE AS TO WHETHER CERTAIN PERSONS DESIGNATED AS SWING MANAGERS WERE TO BE EXCLUDED FROM THE BARGAINING UNIT PURSUANT TO SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT. A THIRD ISSUE CONCERNED A CHALLENGE BY THE APPLICANT TRADE UNION TO THE LIST OF EMPLOYEES FILED BY THE RESPONDENT, WHICH LIST IS NECESSARY FOR THE BOARD TO MAKE A DETERMINATION AS TO THE NUMBER OF EMPLOYEES IN THE BARGAINING UNIT AT THE TIME THE APPLICATION WAS MADE, IN ORDER THAT THE PERCENTAGE OF EMPLOYEES IN THE BARGAINING UNIT WHO WERE MEMBERS OF THE TRADE UNION CAN BE ASCERTAINED AS REQUIRED UNDER SECTION 7 OF THE ACT. THE FOURTH ISSUE CONCERNED A STATEMENT OF DESIRE FILED AND THE LAST ISSUE INVOLVED CHARGES FILED BY THE APPLICANT TRADE UNION.

4. AT THE FIRST HEARING THE RESPONDENT COMPANY ASKED THAT THE BOARD EXCLUDE PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD (HEREINAFTER REFERRED TO AS THE PART TIME EMPLOYEES) FROM THE UNIT OF EMPLOYEES FOR WHICH THE APPLICANT SOUGHT CERTIFICATION. IT HAS BEEN THE BOARD'S ALMOST CONSISTENT PRACTICE IN SITUATIONS WHERE A PARTY ASKS FOR THE EXCLUSION OF PART TIME EMPLOYEES TO PERMIT THE EXCLUSION OF THOSE EMPLOYEES FROM THE FULL TIME BARGAINING UNIT ON THE BASIS THAT THE PART TIME EMPLOYEES HAVE A SEPARATE COMMUNITY OF INTEREST FROM THE FULL TIME EMPLOYEES; SEE E.G. BROCKVILLE GENERAL HOSPITAL (1967) JANUARY OLRB MTHLY. REP. 776 AT 777; BRINKS EXPRESS COMPANY OF CANADA LIMITED (1970) JULY OLRB MTHLY. REP. 502; CHILDREN'S AID SOCIETY OF SAULT STE. MARIE & THE DISTRICT OF ALGOMA (1973) MARCH OLRB REP. 161; CSAO NATIONAL (INC.) BOARD FILE NO.

3170-72-R. HOWEVER, WHERE THERE IS SUCH AN EXCLUSION AND AN APPLICANT TRADE UNION HAS SUFFICIENT MEMBERSHIP IN THE PART TIME BARGAINING UNIT WHICH ENTITLES IT TO A VOTE OR TO OUTRIGHT CERTIFICATION, THE BOARD MAY ALSO ORDER A VOTE OR GRANT A CERTIFICATE TO THE APPLICANT TRADE UNION FOR THE PART TIME BARGAINING UNIT. THE BOARD DOES NOT REQUIRE AN APPLICANT TRADE UNION TO MAKE A SEPARATE APPLICATION FOR SUCH A PART TIME BARGAINING UNIT MERELY BECAUSE THE PART TIME EMPLOYEES HAVE BEEN EXCLUDED FROM THE FULL TIME BARGAINING UNIT. IT IS THE BOARD'S VIEW THAT TO CAUSE AN APPLICANT TRADE UNION TO MAKE SUCH AN APPLICATION IN THESE CIRCUMSTANCES MERELY CREATES A MULTIPLICITY OF PROCEEDINGS WITH THE ATTENDANT CIRCUMSTANCES OF DELAY AND COST TO ALL PARTIES INVOLVED.

5. WE HASTEN TO POINT OUT THAT WHILE THIS PRACTICE IS HIGHLY PREDICTABLE AND DOES OCCUR IN ALMOST ALL SITUATIONS, THE BOARD DOES CONSIDER EACH FACT SITUATION PURSUANT TO ITS STATUTORY OBLIGATION UNDER SECTION 6 OF THE LABOUR RELATIONS ACT WHICH REQUIRES IT TO EXAMINE THE FACTS OF EACH CASE.

6. AT THE ORIGINAL HEARING THIS MATTER WAS DISCUSSED BY THE BOARD WITH THE PARTIES AND THE PARTIES WERE ADVISED OF THE BOARD'S PRACTICE. IT WAS INDICATED THAT IF THE REQUIREMENTS OF SECTION 7 WERE SATISFIED THAT THE BOARD MIGHT ISSUE SEPARATE CERTIFICATES PROVIDING THAT THE APPLICANT TRADE UNION HAD THE REQUISITE MEMBERSHIP. THE OTHER ALTERNATIVES, OF COURSE, OF A REPRESENTATION VOTE OR OUTRIGHT DISMISSAL WERE ALSO POSSIBLE.

7. BECAUSE OF THE NATURE OF THE MATTERS THAT REMAINED IN ISSUE THE BOARD IN ACCORDANCE WITH ITS USUAL PRACTICE APPOINTED AN EXAMINER TO INQUIRE INTO THE LIST OF EMPLOYEES FILED BY THE RESPONDENT AND ALSO THE APPROPRIATENESS AND COMPOSITION OF THE BARGAINING UNIT. THE EXAMINER MET WITH THE PARTIES AND AFTER A CONSIDERABLE NUMBER OF MEETINGS FILED A REPORT WITH THE BOARD DATED MARCH 28, 1973. THE APPLICANT TRADE UNION THEN REQUESTED A HEARING BEFORE THE BOARD WITH RESPECT TO THE REPORT OF THE EXAMINER, AND FOR THESE REASONS AND BECAUSE THERE WERE STILL OUTSTANDING ISSUES THAT REMAINED TO BE RESOLVED THE MATTER WAS AGAIN LISTED FOR HEARING ON MAY 18, 1973.

8. AT THE HEARING ON MAY 18, 1973, IT APPEARED THAT THE APPLICANT TRADE UNION DID NOT HAVE SUFFICIENT MEMBERSHIP TO ENTITLE IT TO EITHER A REPRESENTATION VOTE OR A CERTIFICATE IN ANY FULL TIME BARGAINING UNIT WHICH THE BOARD MIGHT FIND APPROPRIATE (I.E., EITHER AT ONE LOCATION OR AT THE THREE LOCATIONS). ACCORDINGLY WE DISMISSED THE APPLICATION INsofar AS IT CONCERNED THE FULL TIME BARGAINING UNIT.

9. THE BOARD IS PRESENTLY CONCERNED WITH ONLY THOSE PERSONS WHO MIGHT FALL INTO THE PART TIME BARGAINING UNIT. AT THE OUTSET OF THE HEARING COUNSEL FOR THE RESPONDENT COMPANY HAD SUBMITTED THAT THE APPLICANT TRADE UNION HAD ABANDONED ITS APPLICATION INsofar AS THE PART TIME BARGAINING UNIT WAS CONCERNED AND INDICATED THAT THE ONLY APPLICATION THAT WAS PRESENTLY ON FOOT WAS AN APPLICATION WITH RESPECT TO THE FULL



TIME EMPLOYEES. COUNSEL FOR THE APPLICANT TRADE UNION DENIED THAT THERE WAS EVER ANY ABANDONMENT OF ITS APPLICATION WITH RESPECT TO THE PART TIME BARGAINING UNIT.

10. COUNSEL FOR THE RESPONDENT POINTED TO PARAGRAPH 2 OF THE REPORT OF THE EXAMINER WHICH INCLUDES THE FOLLOWING STATEMENT:

"THE APPLICANT CONTENDS THAT THE BARGAINING UNIT IN THIS MATTER SHOULD READ AS FOLLOWS:

'ALL EMPLOYEES OF THE RESPONDENT AT McDONALD'S RESTAURANT LOCATED AT 883 HURON CHURCH LINE, WINDSOR, ONTARIO, SAVE AND EXCEPT THE SWING MANAGER AND PERSONS ABOVE THE RANK OF SWING MANAGER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD.' "

11. THE RESPONDENT FURTHER RELIED ON A LETTER TO THIS BOARD BY COUNSEL FOR THE APPLICANT DATED APRIL 4, 1973, WHEREIN THE APPLICANT REQUESTED A HEARING "TO MAKE REPRESENTATIONS IN SUPPORT OF THE BARGAINING UNIT DESCRIPTION PROPOSED BY THE APPLICANT, AS SET OUT ON PAGE 2 OF THE REPORT."

12. COUNSEL FOR THE APPLICANT RESPONDED TO THAT ARGUMENT BY POINTING OUT THAT PARAGRAPH 2 OF THE REPORT OF THE EXAMINER ALSO CONTAINS A LIST OF EMPLOYEES AGREED UPON BY THE PARTIES WHO FORM THE SUBJECT MATTER OF THIS APPLICATION, AND THAT OF THE 45 EMPLOYEES IN THE LIST THERE ARE 34 WHO ARE PROPERLY CLASSIFIED AS "PART TIME EMPLOYEES". COUNSEL FOR THE APPLICANT SUBMITS THAT THE BARGAINING UNIT AGREED UPON BY THE APPLICANT TRADE UNION IN PARAGRAPH 2 WAS MEPELY A RESPONSE TO THE RESPONDENT'S POSITION WITH RESPECT TO THE FULL TIME BARGAINING UNIT, AND THE RESPONSE WAS MADE TO AMEND THE FULL TIME BARGAINING UNIT BY REMOVING THE PART TIME EMPLOYEES ON THE BASIS THAT THE APPLICANT CONSIDERED THE BOARD'S POSITION IN EXCLUDING PART TIME PERSONS FROM THE FULL TIME BARGAINING UNIT AS ALMOST AUTOMATIC WHERE SUCH A REQUEST WAS MADE.

13. THE APPLICANT ALSO CONTENDED THAT SINCE THE LIST OF EMPLOYEES AGREED UPON IN PARAGRAPH 2 ALSO INCLUDED 34 PART TIME EMPLOYEES IT COULD HARDLY BE SAID THAT IT HAD INTENDED TO ABANDON ITS RIGHT TO REPRESENT THOSE PART TIME EMPLOYEES IN ACCORDANCE WITH THE BOARD'S USUAL PRACTICE.

14. AT THE HEARING THE BOARD RULED THAT THE APPLICANT TRADE UNION HAD NOT ABANDONED ITS APPLICATION INSOFAR AS IT CONCERNED THE PART TIME EMPLOYEES. THE BOARD ACCEPTED THE REPRESENTATIONS OF MR. ARMSTRONG, COUNSEL FOR THE APPLICANT, WHO HAS CONSIDERABLE EXPERIENCE BEFORE THIS BOARD AND WHO IS WELL AWARE OF ITS PRACTICE, AND THE BOARD WAS SATISFIED THAT IF THERE HAD BEEN AN INTENT TO ABANDON THE PART TIME BARGAINING UNIT

IT WOULD HAVE BEEN DONE IN AN UNEQUIVOCAL MANNER. THE BOARD ALSO CONSIDERED THE AGREEMENT IN PARAGRAPH 2 WITH RESPECT TO THE 45 EMPLOYEES WHO ARE THE SUBJECT MATTER OF THE APPLICATION AND THE FACT THAT A HIGH PROPORTION OF THOSE EMPLOYEES WERE CONSIDERED PART TIME EMPLOYEES.

15. THE BOARD SUBSEQUENTLY REVEALED TO THE PARTIES THAT THE APPLICANT TRADE UNION HAD MEMBERSHIP EVIDENCE WITH RESPECT TO 29 OF THE POTENTIAL 34 PART TIME EMPLOYEES WHO MIGHT FALL INTO A PART TIME BARGAINING UNIT. IN THESE CIRCUMSTANCES WE THINK IT EXTREMELY UNLIKELY THAT THE APPLICANT TRADE UNION WOULD ABANDON ITS APPLICATION TO ATTEMPT TO REPRESENT THOSE EMPLOYEES WITHOUT A CLEAR AND UNAMBIGUOUS STATEMENT TO THAT EFFECT, AND THIS MEMBERSHIP DOES CONFIRM THE POSITION TAKEN BY THE APPLICANT TRADE UNION EARLIER IN THE HEARING THAT IT HAD NO INTENTION TO ABANDON THE APPLICATION WITH RESPECT TO THE PART TIME EMPLOYEES.

16. AFTER OUR ORIGINAL RULING WITH RESPECT TO THIS MATTER THE BOARD THEN PROCEEDED WITH A NUMBER OF ADMINISTRATIVE MATTERS, SUCH AS THE COUNT IN THE FULL TIME BARGAINING UNIT. THE BOARD ALSO ATTEMPTED TO ASCERTAIN CERTAIN INFORMATION WITH RESPECT TO EMPLOYEES THAT MIGHT BE INCLUDED IN A PART TIME BARGAINING UNIT SHOULD THE BOARD DETERMINE THAT ALL THREE LOCATIONS FORM AN APPROPRIATE BARGAINING UNIT.

17. MR. PAULIN, COUNSEL FOR THE RESPONDENT, AGAIN CHALLENGED THE FACT THAT THERE WAS A VIABLE APPLICATION WITH RESPECT TO THE PART TIME BARGAINING UNIT, AND THE BOARD THEN RECONSIDERED ITS EARLIER RULING AND CONFIRMED THAT RULING. THE BOARD THEN ADJOURNED TO GIVE THE PARTIES AN OPPORTUNITY TO CONSIDER THEIR RESPECTIVE POSITIONS AND TO CONSULT WITH COUNSEL, AND AFTER THE ADJOURNMENT THE BOARD WAS ADVISED BY MR. PAULIN THAT HE WISHED TO PROCEED TO HAVE THE BOARD'S RULING AS TO WHETHER THERE WAS A PROPER APPLICATION ON FOOT WITH RESPECT TO THE PART TIME BARGAINING UNIT, REVIEWED BY THE COURT. MR. PAULIN ALSO UNDERTOOK TO FILE AN APPLICATION FOR REVIEW WITHIN SEVEN DAYS OF RECEIPT OF THE BOARD'S WRITTEN REASONS CONCERNING THE ISSUES WHICH WE HAVE HEREIN BEFORE SET FORTH.

18. IN VIEW OF THE REQUEST THE BOARD DETERMINED THAT IT WAS APPROPRIATE TO ADJOURN THE HEARING IN THIS MATTER TO GIVE THE RESPONDENT COMPANY AN OPPORTUNITY TO INITIATE PROCEEDINGS TO HAVE OUR DECISION JUDICIALLY REVIEWED. WHILE IT IS NOT NECESSARY THAT THE BOARD ADJOURN IN EVERY CASE, WHERE COUNSEL INDICATES THAT HE WILL HAVE A RULING REVIEWED IT WAS THE UNANIMOUS OPINION OF THE BOARD THAT IN ALL THE CIRCUMSTANCES OF THIS CASE IT WAS A PROPER MATTER FOR ADJOURNMENT IN ORDER TO ENABLE THE RESPONDENT TO OBTAIN JUDICIAL REVIEW; SEE RE CEDARVALE TREE SERVICES LTD. AND LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 [1972] 22 D.L.R. (3d) 40; [1971] 3 O.R. 832 (ONT. CT. APP.).

19. THE MATTER IS THEREFORE ADJOURNED TO A DATE TO BE FIXED BY THE REGISTRAR SUBJECT, OF COURSE, TO THE RESPONDENT COMPANY BEING GIVEN THE OPPORTUNITY TO INITIATE PROCEEDINGS FOR JUDICIAL REVIEW AND FOR THE COURT TO ARRIVE AT A DECISION IN THIS MATTER.

2357-72-R: INTERNATIONAL UNION OF ELECTRICAL, RADIO & MACHINE WORKERS, AFL-CIO-CLC (APPLICANT) v. SIMPLICITY PRODUCTS DIVISION OF MCGRAW-EDISON CANADA LIMITED (RESPONDENT).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND O. HODGES.

APPEARANCES AT THE HEARING: S. T. GOUDGE, H. HADDAWAY AND B. CRAIGS FOR THE APPLICANT; B. H. STEWART, J. CAKEBREAD, C. KELLY AND R. AUSTIN FOR THE RESPONDENT; M. SOMERVILLE FOR THE SIMPLICITY WORKERS' ASSOCIATION.

DECISION OF THE BOARD:

MAY 31, 1973.

1. ON NOVEMBER 16, 1972, AN APPLICATION FOR CERTIFICATION WAS FILED WHEREIN THE APPLICANT PROPOSED A BARGAINING UNIT, WITH CERTAIN EXCEPTIONS HEREIN NOT RELEVANT, CONSISTING OF ALL OF THE RESPONDENT'S EMPLOYEES AT GALT. THE RESPONDENT HOWEVER IN ITS REPLY DATED NOVEMBER 27, 1972, SUGGESTED A BARGAINING UNIT COMPOSED OF ALL OF ITS EMPLOYEES AT GALT AND HESPELER. IN ADDITION, THE RESPONDENT SUBMITTED THAT THE APPLICATION WAS UNTIMELY OWING TO THE EXISTENCE OF A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE SIMPLICITY WORKERS' ASSOCIATION (HEREIN-AFTER REFERRED TO AS THE ASSOCIATION). ACCORDINGLY, BY TELEGRAM DATED NOVEMBER 28, 1972, THE DEPUTY REGISTRAR, PURSUANT TO THE INFORMATION AS SET OUT IN PARAGRAPH #7 OF THE RESPONDENT'S REPLY, NOTIFIED THE ASSOCIATION AT HESPELER THROUGH ITS PRESIDENT, G. RENTON OF THIS APPLICATION AND THAT A HEARING IN THIS REGARD WAS TO BE HELD ON DECEMBER 7, 1972. IN ADDITION, THIS INFORMATION APPEARED ON THE FORM 5 NOTICE TO EMPLOYEES WHICH WAS POSTED UPON THE RESPONDENT'S PREMISES AT GALT ON NOVEMBER 23, 1972. DESPITE THESE NOTICES, THE ASSOCIATION FAILED TO ATTEND AT THE INITIAL HEARING OF THIS MATTER ON DECEMBER 7, 1972, AND NO INTERVENTION OR OTHER CORRESPONDENCE WAS FILED WITH THE BOARD ON ITS BEHALF.

2. ACCORDINGLY, THE BOARD PROCEEDED WITH THE HEARING AS SCHEDULED ON DECEMBER 7, 1972, WHEREIN COUNSEL FOR THE RESPONDENT REITERATED HIS POSITION AS SET OUT IN HIS REPLY THAT A PURPORTED COLLECTIVE AGREEMENT ENTERED INTO BETWEEN THE RESPONDENT AND THE ASSOCIATION CONSTITUTED A BAR TO THE INSTANT APPLICATION. COUNSEL FOR THE APPLICANT OPPOSED THIS PRELIMINARY OBJECTION AND BOTH COUNSEL WERE IN AGREEMENT THAT THE BOARD SHOULD DISPOSE OF THIS ISSUE PRIOR TO DEALING WITH ANY OTHER MATTERS RAISED IN THE PROCEEDINGS. BASED UPON THE EVIDENCE AS ADDUCED AT THIS HEARING, THE BOARD IN ITS DECISION DATED DECEMBER 21, 1972, DECLINED TO IMPOSE A BAR TO THIS APPLICATION.

3. IT SHOULD BE NOTED THAT THE EVIDENCE AS ADDUCED IN THOSE PROCEEDINGS INCLUDED A PURPORTED COLLECTIVE AGREEMENT ENTERED INTO BETWEEN SIMPLICITY PRODUCTS LIMITED AND THE ASSOCIATION DATED FEBRUARY 18, 1971 (EXHIBIT NO. 1) WHEREIN THE LATTER WAS RECOGNIZED AS BARGAINING AGENT FOR CERTAIN OF THE EMPLOYEES AT THE PLANT IN HESPELER. THE EVIDENCE FURTHER DISCLOSED THAT IN ANTICIPATION OF A PLANNED EXPANSION OF OPERATIONS TO A NEW PLANT TO BE CONSTRUCTED IN GALT, SIMPLICITY PRODUCTS



LIMITED AND THE ASSOCIATION ENTERED INTO A MEMORANDUM OF AGREEMENT DATED FEBRUARY 23, 1972, (EXHIBIT No. 2) WHEREIN THESE PARTIES PURPORTED TO "AMEND" EXHIBIT No. 1 BY, INTER ALIA, EXTENDING THE SCOPE CLAUSE TO INCLUDE THE EMPLOYEES TO BE ENGAGED AT THE NEW GALT PLANT AS WELL AS THE EMPLOYEES AT THE HESPELER PLANT. THE NEW PLANT BEGAN ACTUAL OPERATIONS IN AUGUST OF 1972, AND ALTHOUGH IT WAS SITUATE IN A DIFFERENT MUNICIPALITY, THAN THE OLDER PLANT, BOTH PLANTS ARE ONLY APPROXIMATELY TWO MILES APART. HOWEVER, EFFECTIVE JANUARY 1, 1973, BOTH THE MUNICIPALITIES OF HESPELER AND GALT HAVE NOW BEEN INCLUDED IN THE NEW AMALGAMATED MUNICIPALITY OF CAMBRIDGE.

4. IT IS THEREFORE IN THE LIGHT OF THIS RELEVANT BACKGROUND, THAT THE ASSOCIATION'S REQUEST TO BE NOW PERMITTED TO INTERVENE IN THESE PROCEEDINGS, MUST BE READ. AT THE SHOW CAUSE HEARING ON MAY 16, 1973, CALLED BY THE BOARD PURSUANT TO ITS DECISION IN THIS REGARD DATED MAY 9, 1973, COUNSEL FOR THE ASSOCIATION ALLEGED THAT AS NOTICE OF THIS APPLICATION WAS NOT POSTED IN THE HESPELER PLANT AND THAT AS THE NOTICE ONLY REFERRED TO THE EMPLOYEES AT THE GALT PLANT, IT WAS REASONABLE FOR THE ASSOCIATION TO ASSUME THAT THE HESPELER EMPLOYEES WOULD NOT BE AFFECTED AND THEREFORE IT DID NOT INTERVENE.

5. WITH THIS POSITION THIS BOARD MUST DISAGREE. ON THE BASIS OF THE EXHIBITS AS FILED AT THE INITIAL HEARING OF THIS MATTER, IT IS CLEAR THAT THE ASSOCIATION HAD A PURPORTED INTEREST NOT ONLY IN THE EMPLOYEES ENGAGED AT THE HESPELER PLANT (SEE EXHIBIT No. 1) BUT ALSO TO THOSE WORKING AT THE GALT PLANT (SEE EXHIBIT No. 2).

6. IN OUR OPINION, THE ASSOCIATION IN THE FACE OF SPECIFIC NOTICE AS EVIDENCED IN THE REGISTRAR'S TELEGRAM, CHOSE TO ABSENT ITSELF FROM THE INITIAL PROCEEDINGS, AT ITS PERIL. ACCORDINGLY, WE FIND IN ALL OF THE CIRCUMSTANCES THAT IT WOULD HAVE BEEN REASONABLE FOR THE ASSOCIATION TO INTERVENE AT THE OUTSET IN THIS MATTER IN ORDER TO PROTECT WHAT INTEREST IT MAY HAVE PURPORTED TO REPRESENT OVER THE EMPLOYEES AT BOTH THE HESPELER AND GALT LOCATIONS. IN THESE CIRCUMSTANCES, WE FURTHER FIND THAT IT WOULD ALSO HAVE BEEN REASONABLE FOR THE ASSOCIATION TO HAVE CONTEMPLATED THE POSSIBILITY OF THE BARGAINING UNIT AS PROPOSED BY THE APPLICANT BEING EXTENDED TO THE GALT EMPLOYEES AS THIS IS THE VERY RESULT, IT WOULD APPEAR, THAT IT PURPORTED TO ACHIEVE IN ENTERING INTO EXHIBIT No. 2.

7. IN THE RESULT, WE FIND NO JUSTIFICATION IN DELAYING THESE PROCEEDINGS ANY FURTHER SO AS TO PERMIT THE ASSOCIATION TO INTERVENE. WE ARE FURTHER SATISFIED THIS FINDING DOES NOT RESULT IN A DENIAL OF NATURAL JUSTICE TO THE EMPLOYEES AT THE HESPELER PLANT AS SUGGESTED BY COUNSEL FOR THE ASSOCIATION. EVEN IF CERTAIN OF THE RESPONDENT'S EMPLOYEES WERE NOT DULY INFORMED OF THE NATURE OF THIS APPLICATION, THEY NEVERTHELESS ARE IN A POSITION TO VOICE THEIR OPPOSITION SHOULD THEY SO DESIRE, IN THE REPRESENTATION VOTE WHICH WILL BE ORDERED IN THESE PROCEEDINGS AS SET OUT BELOW. ACCORDINGLY, THE REQUEST OF THE ASSOCIATION TO INTERVENE IN THESE PROCEEDINGS IS DENIED.

10. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

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12. THE MATTER IS REFERRED TO THE REGISTRAR.

2827-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 247 (APPLICANT) v. SCHOKBETON QUEBEC INC. (RESPONDENT) v. INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 765 (INTERVENER).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS H. J. F. ADE AND E. BOYER.

APPEARANCES AT THE HEARING: RAYMOND KOSKIE, M. J. REILLY AND H. ALPORT FOR THE APPLICANT; NO ONE APPEARING FOR THE RESPONDENT; G. W. ALLEN AND J. WALMSLEY FOR THE INTERVENER.

DECISION OF THE BOARD: MAY 30, 1973.

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2. THE BOARD FURTHER FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 108 OF THE LABOUR RELATIONS ACT.

3. THIS APPLICATION FOR CERTIFICATION WAS FILED ON NOVEMBER 14, 1972, AND THE APPLICANT IS SEEKING CERTIFICATION FOR A BARGAINING UNIT OF EMPLOYEES OF THE RESPONDENT DESCRIBED IN TERMS OF ALL CONSTRUCTION WORKERS IN THE EMPLOY OF THE RESPONDENT IN THE BOARD'S GEOGRAPHIC AREA #29, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793.

4. THE INTERVENER CLAIMED THAT IT IS PARTY TO A COLLECTIVE AGREEMENT WITH THE RESPONDENT WHICH WAS SIGNED ON AUGUST 1, 1971, WHEREBY IT IS THE BARGAINING AGENT OF THE IRONWORKER AFFECTED BY THIS APPLICATION.

5. THE APPLICANT AND THE INTERVENER AGREED THAT THE EMPLOYEES AFFECTED BY THIS APPLICATION CONSISTED OF THREE CONSTRUCTION LABOURERS, ONE BRICKLAYER AND ONE IRONWORKER AND THAT THE JOB SITE AFFECTED BY THIS APPLICATION WAS NEAR BATH IN THE COUNTY OF LENNOX AND ADDINGTON, ONTARIO.

6. THE APPLICANT ARGUED THAT THE INTERVENER HAD NO STATUS TO INTERVENE IN THIS APPLICATION SINCE AT NO TIME RELEVANT TO THE APPLICATION WAS

IT ENTITLED TO NOR DID IT REPRESENT ANY OF THE SUBJECT EMPLOYEES. IN THE ALTERNATIVE, THE APPLICANT ARGUED THAT THE PURPORTED COLLECTIVE AGREEMENT REFERRED TO IN PARAGRAPH 4 HEREIN, IS NOT A BAR TO THIS APPLICATION ON TWO GROUNDS. FIRSTLY, THAT THE PURPORTED COLLECTIVE AGREEMENT IS NOT A COLLECTIVE AGREEMENT WITHIN THE MEANING OF SECTION 1(1)(E) OF THE LABOUR RELATIONS ACT AND SECONDLY, AND IN THE ALTERNATIVE, THAT THE PURPORTED COLLECTIVE AGREEMENT IS INVALID OR IS NOT A COLLECTIVE AGREEMENT WITHIN THE MEANING OF SECTION 1(1)(E) OF THE LABOUR RELATIONS ACT IN SO FAR AS IT RELATES TO EMPLOYEES OF THE RESPONDENT OTHER THAN THE UNIT OF EMPLOYEES FOR WHICH THE INTERVENER WAS CERTIFIED BY THE BOARD IN A DECISION DATED JULY 21, 1971. THE APPLICANT ALSO RELIED UPON SECTION 40(A) OF THE LABOUR RELATIONS ACT.

7. IN A DECISION DATED JULY 21, 1971, THE BOARD ISSUED A CERTIFICATE TO THE INTERVENER WITH RESPECT TO THE FOLLOWING BARGAINING UNIT:

"ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN".

IN THAT DECISION, THE BOARD ALSO ADDED A CLARITY NOTE IN WHICH IT DECLARED THAT WELDERS WORKING AT THE IRONWORKING TRADE ARE EMPLOYEES INCLUDED IN THE BARGAINING UNIT.

8. IN SUPPORT OF ITS ARGUMENT, THE APPLICANT ALLEGED THE FOLLOWING:

(I) AT THE TIME THE PURPORTED COLLECTIVE AGREEMENT WAS ENTERED INTO, THE RESPONDENT HAD NO EMPLOYEES COMING WITHIN THE BARGAINING UNIT DESCRIBED THEREIN;

(II) ALTERNATIVELY, IF THE RESPONDENT HAD ANY EMPLOYEES AT THE TIME THE PURPORTED COLLECTIVE AGREEMENT WAS ENTERED INTO, THE INTERVENER DID NOT NOR WAS IT ENTITLED TO REPRESENT EMPLOYEES OTHER THAN IRONWORKERS IN THE RESPONDENT'S EMPLOY IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL.

(III) THE RESPONDENT AND THE INTERVENER, BY ENTERING INTO THE PURPORTED COLLECTIVE AGREEMENT TO COVER EMPLOYEES OTHER THAN THOSE DESCRIBED IN PARAGRAPH (II) HEREIN, BY DEDUCTING OR REQUIRING THE DEDUCTION OF WORKING DUES ASSESSMENT FROM THE WAGES OF



THE EMPLOYEES AND BY REQUIRING AS A CONDITION OF EMPLOYMENT THAT ALL EMPLOYEES BE MEMBERS OF THE INTERVENER, CONSTITUTES EMPLOYER SUPPORT WITHIN THE MEANING OF SECTION 40(A) OF THE ACT.

9. AT THE HEARING, THE APPLICANT AND THE INTERVENER AGREED ON THE FACTS WHICH THEY WISHED TO PLACE BEFORE THE BOARD. THESE FACTS ARE NOW SET FORTH:

(I) ON JULY 21, 1971, THE BOARD ISSUED A CERTIFICATE TO THE APPLICANT WITH RESPECT TO THE BARGAINING UNIT REFERRED TO IN PARAGRAPH SEVEN HEREIN.

(II) THE INTERVENER AND THE RESPONDENT SIGNED THE ALLEGED COLLECTIVE AGREEMENT ON AUGUST 1, 1971.

(III) AT THE TIME OF THE SIGNING OF THE ALLEGED COLLECTIVE AGREEMENT, THE RESPONDENT HAD IRONWORKERS, APPRENTICES AND WELDERS IN ITS EMPLOY IN THE OTTAWA AREA.

(IV) AT THE TIME OF THE SIGNING OF THE ALLEGED COLLECTIVE AGREEMENT THE RESPONDENT HAD NO PROJECTS IN ONTARIO APART FROM ITS THREE PROJECTS WITHIN THE BOARD'S GEOGRAPHIC AREA #15.

(V) THE ALLEGED COLLECTIVE AGREEMENT PURPORTS TO COVER IRONWORKERS, APPRENTICES AND WELDERS BUT DOES NOT COVER RODMEN.

(VI) AT THE TIME OF THE SIGNING OF THE ALLEGED COLLECTIVE AGREEMENT THE RESPONDENT HAD NO EMPLOYEES IN THE BOARD'S GEOGRAPHIC AREA #29.

(VII) AT THE TIME OF THE SIGNING OF THE ALLEGED COLLECTIVE AGREEMENT THE INTERVENER HAD BARGAINING RIGHTS FOR EMPLOYEES OF THE RESPONDENT SOLELY IN THE BOARD'S GEOGRAPHIC AREA #15.

10. THE PARTIES WERE UNABLE TO AGREE ON THE GEOGRAPHIC AREA COVERED BY THE ALLEGED COLLECTIVE AGREEMENT.

11. THE APPLICANT ARGUED THAT THE COLLECTIVE AGREEMENT RAISED AS A BAR BY THE INTERVENER IS NOT A BAR TO THIS APPLICATION BECAUSE AT THE TIME IT WAS ENTERED INTO, THE INTERVENER WAS NOT ENTITLED TO REPRESENT EMPLOYEES OF THE RESPONDENT OTHER THAN IRONWORKERS IN THE EMPLOY OF THE RESPONDENT IN AREA NUMBER 15. THE APPLICANT FURTHER ARGUED THAT THE

ALLEGED COLLECTIVE AGREEMENT, IN SO FAR AS IT AFFECTS ANY AREA OTHER THAN THE BOARD'S GEOGRAPHIC AREA NUMBER 15, IS NOT A COLLECTIVE AGREEMENT AND IS INVALID. THE APPLICANT INTERPRETED THE ALLEGED COLLECTIVE AGREEMENT AS COVERING ALL EMPLOYEES (RATHER THAN ALL IRONWORKERS) OF THE RESPONDENT IN ONTARIO OR IN THE BOARD'S GEOGRAPHIC AREA NUMBER 29.

12. THE APPLICANT ARGUED THAT SINCE THE INTERVENER DID NOT REPRESENT ANY EMPLOYEES OF THE RESPONDENT IN THE BOARD'S GEOGRAPHIC AREA NUMBER 29, THEREFORE IT WAS NOT ENTITLED TO ENTER INTO A COLLECTIVE AGREEMENT BEYOND THE BOARD'S GEOGRAPHIC AREA NUMBER 15.

13. IN SUPPORT OF ITS POSITION, THE APPLICANT RELIED ON SEVERAL EARLIER DECISIONS OF THE BOARD. THE APPLICANT REFERRED TO THE KINGSWAY PLASTERING CO. LTD. CASE, (1970) OLRB REP. 1360; THE SUNRISE PAVING & CONSTRUCTION CO. LTD. CASE, (1972) OLRB REP. 199; THE NIAGARA CRUSHED STONE (HUMBERSTONE) LTD. CASE, 58 CLLC ¶18,118; THE SOVEREIGN CONSTRUCTION CO. LTD. CASE, 60 CLLC ¶16,168; THE H. G. FRANCIS & SONS LTD. CASE, 60 CLLC ¶16,172 AND THE HARDING BRANTFORD LIMITED CASE, (1966) OLRB REP. 245.

14. THE BOARD HAS CONSIDERED THE REPRESENTATIONS OF THE PARTIES INCLUDING THE DECISIONS REFERRED TO IN PARAGRAPH 13 HEREIN. A CAREFUL EXAMINATION OF THESE DECISIONS, HOWEVER, REVEALS THAT NONE OF THESE DECISIONS IS EITHER IDENTICAL OR EVEN SIMILAR TO THE FACTS OF THIS APPLICATION.

15. THE BOARD FINDS THAT THE RESPONDENT AND THE INTERVENER ARE PARTIES TO A COLLECTIVE AGREEMENT COVERING IRONWORKERS IN THE EMPLOY OF THE RESPONDENT IN AT LEAST THE COUNTIES OF ADDINGTON, CARLETON, DUNDAS, FRONTENAC, GLENGARRY, GRENVILLE, LANARK, LEEDS, LENNOX, PRESCOTT, RENFREW, RUSSELL, STORMONT, AND ALL OF THE COUNTY OF HASTINGS EXCEPT THE TOWNSHIPS OF MARMORA, RAWDON, SIDNEY AND THURLOW.

16. HAVING REGARD TO THE AGREED STATEMENTS OF FACT, THE BOARD FINDS THAT AT THE TIME OF THE SIGNING OF THE COLLECTIVE AGREEMENT, THE INTERVENER WAS THE CERTIFIED BARGAINING AGENT FOR THE EMPLOYEES REFERRED TO IN PARAGRAPH 7 HEREIN AND THAT AT THE TIME OF THE SIGNING OF THE COLLECTIVE AGREEMENT, THE INTERVENER WAS THE BARGAINING AGENT OF ALL OF THE RESPONDENT'S EMPLOYEES IN ONTARIO.

17. IT IS, THEREFORE, APPARENT THAT THE INTERVENER OBTAINED BARGAINING RIGHTS FOR THE EMPLOYEES REFERRED TO IN PARAGRAPH 15 HEREIN, PARTLY AS A RESULT OF CERTIFICATION AND PARTLY AS A RESULT OF VOLUNTARY RECOGNITION. THERE WAS NO EVIDENCE BEFORE THE BOARD THAT THE INTERVENER WAS NOT ENTITLED TO REPRESENT THE EMPLOYEES COVERED BY THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER AT THE TIME THE COLLECTIVE AGREEMENT WAS ENTERED INTO.

18. HAVING REGARD TO THE FOREGOING, THE BOARD FINDS THAT THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER IS A BAR TO THIS APPLICATION FOR CERTIFICATION IN SO FAR AS THE APPLICATION APPLIES TO IRONWORKERS.

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21.        A CERTIFICATE WILL ISSUE TO THE APPLICANT.







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C.L.C. (APPLICANT) V. CANADA DRY BOTTLING COMPANY (WINDSOR) LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (REQUEST DENIED).

3447-72-R: PRINTING SPECIALTIES AND PAPER PRODUCTS UNION LOCAL 540 (APPLICANT) V. DEMOCON LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (REQUEST DENIED).

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## APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING MAY 1973

### BARGAINING AGENTS CERTIFIED DURING MAY

#### NO VOTE CONDUCTED

18765-70-R: CSAO NATIONAL (INC.) (APPLICANT) V. TORONTO GENERAL HOSPITAL (RESPONDENT) V. CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101 (INTERVENER).

UNIT: "ALL MEDICAL LABORATORY TECHNOLOGISTS, TECHNICIANS AND THEIR ASSISTANTS EMPLOYED BY THE RESPONDENT IN ITS MEDICAL LABORATORIES UNDER THE COUNCIL OF HEADS OF LABORATORY DEPARTMENTS IN THE CITY OF TORONTO, SAVE AND EXCEPT TECHNOLOGISTS IN CHARGE (HEMATOLOGY) AND TECHNOLOGISTS IN CHARGE (OPD - EMERGENCY LABORATORY) AND PERSONS ABOVE THE RANK OF SUCH TECHNOLOGISTS IN CHARGE, STUDENTS IN TRAINING AND STUDENTS EMPLOYED DURING SCHOOL VACATION PERIODS, OFFICE AND CLERICAL STAFF, PRACTISING MEMBERS OF THE MEDICAL AND NURSING PROFESSIONS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR (24) HOURS PER WEEK AND PERSONS COVERED BY SUBSISTING COLLECTIVE AGREEMENTS." (197 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR PURPOSES OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT TECHNOLOGISTS IN CHARGE (BLOOD TRANSFUSION LABORATORY) (MICROBIOLOGY) (ANATOMICAL PATHOLOGY) DO NOT EXERCISE MANAGERIAL RESPONSIBILITIES AND ARE INCLUDED IN THE BARGAINING UNIT). ... (FOR PURPOSES OF CLARITY THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT SPECIAL METHODS TECHNOLOGIST, INSTRUMENTATION TECHNOLOGIST AND AUTOMATION TECHNOLOGIST DO NOT EXERCISE MANAGERIAL RESPONSIBILITIES AND ARE INCLUDED IN THE BARGAINING UNIT.).

18770-70-R: CSAO NATIONAL (INC.) (APPLICANT) V. NIAGARA LABORATORIES, DIVISION OF MEDICAL DATA SCIENCES LIMITED (RESPONDENT).

UNIT: "ALL MEDICAL LABORATORY TECHNOLOGISTS, TECHNICIANS AND ASSISTANTS EMPLOYED BY THE RESPONDENT IN ITS LABORATORIES LOCATED AT 15 WELLAND AVENUE IN ST. CATHARINES, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION

PERIOD." (14 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

18771-70-R: CSAO NATIONAL (INC.) (APPLICANT) V. CHEDOKE HOSPITALS (RESPONDENT).

UNIT: "ALL TECHNOLOGISTS AND TECHNICIANS EMPLOYED BY THE RESPONDENT IN ITS MEDICAL LABORATORIES AT HAMILTON, SAVE AND EXCEPT CHARGE TECHNOLOGISTS AND PERSONS ABOVE THE RANK OF CHARGE TECHNOLOGIST, LABORATORY STUDENTS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND PERSONS COVERED BY SUBSISTING COLLECTIVE AGREEMENTS BETWEEN THE RESPONDENT AND THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 839 AND THE RESPONDENT AND THE NURSES' ASSOCIATION, CHEDOKE HOSPITALS." (39 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR PURPOSES OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT TECHNOLOGISTS AND TECHNICIANS EMPLOYED BY THE RESPONDENT IN THE MEDICAL LABORATORIES OF THE HAMILTON AND DISTRICT SCHOOL OF MEDICAL TECHNOLOGY ARE NOT INCLUDED IN THE BARGAINING UNIT.).

18772-70-R: CSAO NATIONAL (INC.) (APPLICANT) V. CHEDOKE HOSPITALS (RESPONDENT).

UNIT: "ALL MEDICAL LABORATORY TECHNOLOGISTS AND TECHNICIANS EMPLOYED BY THE RESPONDENT IN ITS HAMILTON AND DISTRICT SCHOOL OF MEDICAL TECHNOLOGY AT HAMILTON, SAVE AND EXCEPT DIVISION HEADS AND PERSONS ABOVE THE RANK OF DIVISION HEAD, LABORATORY STUDENTS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 839." (24 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

1516-71-R: THE HEAVY CONSTRUCTION ASSOCIATION OF TORONTO (APPLICANT) V. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (RESPONDENT).

UNIT: "ALL EMPLOYERS OF EMPLOYEES FOR WHOM THE RESPONDENT HAS BARGAINING RIGHTS IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK, THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING, THE TOWNS OF OAKVILLE AND MILTON AND THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, IN THE HEAVY ENGINEERING SECTOR OF THE CONSTRUCTION INDUSTRY." (NO EMPLOYEES IN THE UNIT).

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1970-72-R: NURSES' ASSOCIATION PETERBOROUGH CIVIC HOSPITAL (APPLICANT) V. PETERBOROUGH CIVIC HOSPITAL (RESPONDENT) V. ONTARIO BRANCH, CANADIAN PHYSIOTHERAPY ASSOCIATION (INTERVENER).

UNIT #1: "ALL REGISTERED AND GRADUATE NURSES EMPLOYED BY THE RESPONDENT



ENGAGED IN NURSING AND TEACHING AT PETERBOROUGH, SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK." (137 EMPLOYEES IN THE UNIT).

(BARGAINING UNIT #2 - SEE APPLICATION CERTIFIED TO POST-HEARING VOTE).

2342-72-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. CAYUGA MATERIALS & CONSTRUCTION CO. LIMITED (RESPONDENT) V. THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (INTERVENER).

UNIT #1: "ALL EMPLOYEES OF THE RESPONDENT WORKING IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND THOSE ABOVE THE RANK OF NON-WORKING FOREMAN." (13 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

UNIT #2: "ALL EMPLOYEES OF THE RESPONDENT WORKING IN THE COUNTIES OF BRANT AND NORFOLK ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND THOSE ABOVE THE RANK OF NON-WORKING FOREMAN." (12 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

2827-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 247 (APPLICANT) V. SCHOKBETON QUEBEC INC. (RESPONDENT) V. INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 765 (INTERVENER).

UNIT: "ALL CONSTRUCTION LABOURERS, BRICKLAYERS AND BRICKLAYERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LENNOX AND ADDINGTON, FRONTENAC AND THE TOWNSHIPS OF REAR OF LEEDS AND LANSDOWNE, FRONT OF LEEDS AND LANSDOWNE, REAR OF YONGE AND ESCOTT, FRONT OF YONGE AND FRONT OF ESCOTT IN THE COUNTY OF LEEDS, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

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2956-72-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. EASTERN CONSTRUCTION COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF SIMCOE, THE DISTRICT OF MUSKOKA AND THE TOWNSHIPS OF RAMA, MARA AND THORAH IN THE COUNTY OF ONTARIO ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES).

3274-72-R: CANADIAN FOOD AND ALLIED WORKERS, LOCAL UNION 633, CHARTERED BY THE AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL, CIO, CLC (APPLICANT) V. DARRIGO'S FOOD MARKETS ONT. LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL MEAT DEPARTMENT EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES, IN METROPOLITAN TORONTO, SAVE AND EXCEPT MEAT DEPARTMENT MANAGERS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (42 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

3280-72-R: CANADIAN FOOD AND ALLIED WORKERS, LOCAL UNION 175 CHARTERED BY THE AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL, CIO, CLC (APPLICANT) V. DARRIGO'S FOOD MARKETS ONT. LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORE IN METROPOLITAN TORONTO, SAVE AND EXCEPT MEAT DEPARTMENT EMPLOYEES, ASSISTANT STORE MANAGERS, PERSONS EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (57 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

3341-72-R: NURSES' ASSOCIATION EXTENDICARE NURSING HOME (APPLICANT) V. EXTENDICARE (CANADA) LTD. (RESPONDENT).

UNIT: "ALL REGISTERED AND GRADUATE NURSES EMPLOYED BY THE RESPONDENT AT THE EXTENDICARE NURSING HOME IN LONDON, SAVE AND EXCEPT THE DIRECTOR OF NURSING." (14 EMPLOYEES IN THE UNIT).

3376-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. ONTARIO HUMANE SOCIETY (ONTARIO SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS) (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PEEL COUNTY BRANCH IN THE COUNTY OF PEEL, SAVE AND EXCEPT MANAGERS, PERSONS ABOVE THE RANK OF MANAGER AND OFFICE STAFF." (16 EMPLOYEES IN THE UNIT).

3436-72-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE TOWN OF OAKVILLE (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OAKVILLE EMPLOYED IN ITS PUBLIC TRANSPORTATION DEPARTMENT, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, TRANSPORTATION MANAGER, OFFICE STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND STUDENTS EMPLOYED ON A CO-OPERATIVE PROGRAMME." (28 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE FOREGOING).

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3449-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1669 (APPLICANT) V. JOHN MILLER & SONS LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF KENORA, INCLUDING THE PATRICIA PORTION, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

3452-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. MINAKI LODGE RESORTS LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF KENORA, INCLUDING THE PATRICIA PORTION, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

3501-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 527 (APPLICANT) V. ART. SPINO ENTERPRISES INC. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (14 EMPLOYEES IN THE UNIT).

3523-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. MEDEX NURSING CENTRE (OSHAWA) (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OSHAWA, SAVE AND EXCEPT SUPERVISORS AND ADMINISTRATOR, PERSONS ABOVE THE RANKS OF SUPERVISOR AND ADMINISTRATOR, REGISTERED NURSES, GRADUATE NURSES, TECHNICAL PERSONNEL, GRADUATE DIETITIANS, OFFICE STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (93 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

3525-72-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION NO. 911 (APPLICANT) V. THE METROPOLITAN GENERAL HOSPITAL (RESPONDENT).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT (A) THE ADMINISTRATOR, ASSISTANT ADMINISTRATOR, ADMINISTRATIVE ASSISTANT, PERSONNEL DIRECTOR, DIRECTOR OF PURCHASING, BUSINESS MANAGER, ENVIRONMENTAL CONTROL OFFICER, CHIEF MEDICAL RECORD LIBRARIAN, DIRECTOR OF SOCIAL SERVICE, FUND RAISING CHAIRMAN, REGISTERED NURSES, AND (B) THE SECRETARY TO THE ADMINISTRATOR, THE SECRETARY TO THE ASSISTANT ADMINISTRATOR, THE SECRETARY TO THE ADMINISTRATIVE ASSISTANT, THE SECRETARY TO THE BUSINESS MANAGER AND THE SECRETARIES TO THE PERSONNEL DIRECTOR, AND SAVE AND EXCEPT PART-TIME EMPLOYEES WHO REGULARLY WORK NOT MORE THAN TWENTY-FOUR (24) HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD OR ON A CO-OPERATIVE WORK-STUDY PROGRAMME." (112 EMPLOYEES IN THE UNIT). (HAVING REGARD THEREFORE TO THE AGREEMENT OF THE PARTIES).

3548-73-R: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) V. CIP CONTAINERS LIMITED (RESPONDENT).



UNIT: "ALL OFFICE EMPLOYEES OF THE RESPONDENT AT 575 PALL MALL STREET IN LONDON, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, PLANT ACCOUNTANT, ASSISTANT PLANT ACCOUNTANT, ONE SECRETARY TO THE DISTRICT MANAGER, SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (24 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

3554-73-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. BEST-VIEW HOLDINGS LIMITED (RESPONDENT) V. CANADIAN UNION OF PUBLIC EMPLOYEES (INTERVENER #1) V. SERVICE EMPLOYEES UNION LOCAL 204 AFFILIATED A.F. OF C.I.O. C.L.C. (INTERVENER #2).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN THE CITY OF ST. CATHARINES, SAVE AND EXCEPT REGISTERED NURSES, SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (77 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE SUBMISSIONS OF THE PARTIES).

3557-73-R: TEAMSTERS LOCAL 879 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. TODERAN BUILDING SUPPLY LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ST. CATHARINES, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND CASUAL EMPLOYEES." (15 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

3562-73-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. STANDARD PAVING & MATERIALS, LIMITED (RESPONDENT) V. READY-MIX, BUILDING SUPPLY, HYDRO & CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS, LOCAL 230 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN ITS YARD AT 37 COMMERCIAL ROAD IN THE BOROUGH OF EAST YORK, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF." (3 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR PURPOSES OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT DRIVERS WORKING OUT OF THE YARD ARE NOT INCLUDED IN THE BARGAINING UNIT.).

3567-73-R: SERVICE EMPLOYEES UNION LOCAL 268, AFFILIATED WITH THE SERVICE EMPLOYEES INTERNATIONAL UNION, A.F. OF L., C.I.O. & C.L.C. (APPLICANT) V. PLUMMER MEMORIAL PUBLIC HOSPITAL (RESPONDENT).

UNIT: "ALL OFFICE AND CLERICAL PERSONNEL EMPLOYED AT PLUMMER MEMORIAL PUBLIC HOSPITAL IN ITS HOSPITAL AT SAULT STE. MARIE, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETICIANS, STUDENT DIETICIANS, TECH-

NICAL PERSONNEL, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT." (63 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT THE TERM TECHNICAL PERSONNEL COMPRISES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS.).

3568-73-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. G. TAMBLYN LIMITED (RESPONDENT).

UNIT #1: "ALL EMPLOYEES OF THE RESPONDENT AT RICHMOND HILL, SAVE AND EXCEPT MERCHANDISE MANAGER, PERSONS ABOVE THE RANK OF MERCHANDISE MANAGER, GRADUATE AND UNDERGRADUATE PHARMACISTS, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (4 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE SUBMISSIONS OF THE PARTIES).

UNIT #2: "ALL EMPLOYEES OF THE RESPONDENT AT RICHMOND HILL REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, SAVE AND EXCEPT MERCHANDISE MANAGER, PERSONS ABOVE THE RANK OF MERCHANDISE MANAGER, GRADUATE AND UNDERGRADUATE PHARMACISTS AND OFFICE STAFF." (6 EMPLOYEES IN THE UNIT).

3569-73-R: GENERAL TRUCK DRIVERS' UNION LOCAL 938 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. CANADIAN SILK MANUFACTURING CO. LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT AND WORKING OUT OF NORTH BAY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (11 EMPLOYEES IN THE UNIT).

3575-73-R: HOTELS, CLUBS, RESTAURANTS, TAVERNS EMPLOYEES UNION LOCAL 261 (APPLICANT) V. VS SERVICES LTD. (RESPONDENT) V. ONTARIO DIETETIC ASSOCIATION (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS FOOD MANAGEMENT SERVICES AT RIVERSIDE HOSPITAL, 1967 RIVERSIDE DRIVE, OTTAWA, SAVE AND EXCEPT MANAGER, SUPERVISORS, PERSONS ABOVE THE RANKS OF MANAGER AND SUPERVISOR, GRADUATE DIETITIANS, STUDENT DIETITIANS, CHEF, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (37 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

3582-73-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL 141 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. FICKLING CARTAGE & STORAGE LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT FOREMEN, DISPATCHERS, PERSONS ABOVE THE RANKS OF FOREMAN AND DISPATCHER, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (16 EMPLOYEES IN THE UNIT).

3589-73-R: CSAO NATIONAL (INC.) (APPLICANT) V. ST. JOSEPH HOSPITAL OF SUDBURY (RESPONDENT).

UNIT: "ALL LAY MEDICAL TECHNOLOGISTS AND TECHNICIANS EMPLOYED BY THE RESPONDENT IN ITS MEDICAL LABORATORIES AT SUDBURY, SAVE AND EXCEPT CHIEF TECHNOLOGIST AND PERSONS ABOVE THE RANK OF CHIEF TECHNOLOGIST, STUDENTS, OFFICE AND CLERICAL STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND PERSONS COVERED BY SUBSISTING COLLECTIVE AGREEMENTS BETWEEN THE RESPONDENT AND CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 161, AND THE RESPONDENT AND THE NURSES' ASSOCIATION ST. JOSEPH HOSPITAL, SUDBURY." (11 EMPLOYEES IN THE UNIT). (HAVING CONSIDERED THE REPRESENTATIONS OF THE PARTIES).

3590-73-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE DUFFERIN-PEEL COUNTY ROMAN CATHOLIC SEPARATE SCHOOL BOARD (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL 1483." (40 EMPLOYEES IN THE UNIT).

3593-73-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. WITTICH'S BREAD LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT KITCHENER, SAVE AND EXCEPT ROUTE SUPERVISORS, PERSONS ABOVE THE RANK OF ROUTE SUPERVISOR AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (5 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES).

3595-73-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. SYNTHANE TAYLOR (CANADA) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE BOROUGH OF SCARBOROUGH, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (13 EMPLOYEES IN THE UNIT).

3607-73-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. CENTRAL ALGOMA BOARD OF EDUCATION (RESPONDENT).

UNIT #1: "ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT ADMINISTRATIVE OFFICERS AND PERSONS ABOVE THE RANK OF ADMINISTRATIVE OFFICERS AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (8 EMPLOYEES IN THE UNIT).



UNIT #2: "ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, SAVE AND EXCEPT ADMINISTRATIVE OFFICERS AND PERSONS ABOVE THE RANK OF ADMINISTRATIVE OFFICERS." (8 EMPLOYEES IN THE UNIT).

3609-73-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837 (APPLICANT) V. NIAGARA DIVISION OF STEED AND EVANS LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF NIAGARA AND THE COUNTY OF HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (24 EMPLOYEES IN THE UNIT).

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3610-73-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION NO. 911 (APPLICANT) V. THE CORPORATION OF THE TOWN OF AMHERSTBURG (RESPONDENT).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT CLERK-ADMINISTRATOR AND DEPUTY CLERK-ADMINISTRATOR." (3 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

3615-73-R: CANADIAN FOOD AND ALLIED WORKERS LOCAL UNION 633, CHARTERED BY THE AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA (APPLICANT) V. NATIONAL GROCERS COMPANY LIMITED, OPERATING AS BUTCHER BOY OK ECONOMY MARKETS (RESPONDENT).

UNIT: "ALL MEAT DEPARTMENT EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES IN THE VILLAGE OF LAMBETH, SAVE AND EXCEPT PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (7 EMPLOYEES IN THE UNIT).

3616-73-R: CANADIAN FOOD AND ALLIED WORKERS LOCAL UNION 633, CHARTERED BY THE AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA (APPLICANT) V. NATIONAL GROCERS COMPANY LIMITED AND ERIC HINTON CARRYING ON BUSINESS IN PARTNERSHIP UNDER THE FIRM NAME AND STYLE OF HINTON'S RED AND WHITE FOODMASTER (RESPONDENT).

UNIT: "ALL MEAT DEPARTMENT EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES AT LONDON, SAVE AND EXCEPT PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (3 EMPLOYEES IN THE UNIT).

3618-73-R: CANADIAN FOOD AND ALLIED WORKERS LOCAL UNION 175, CHARTERED BY THE AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA (APPLICANT) V. INTERCITY FOOD SERVICES INC. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RESTAURANTS IN BRAMALEA, IN THE TOWNSHIP OF CHINGUACOUSY REGULARLY EMPLOYED FOR NOT MORE THAN 24

HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (26 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

3621-73-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. W. McCLOY LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

3623-73-R: CANADIAN FOOD AND ALLIED WORKERS LOCAL UNION 175, CHARTERED BY THE AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA (APPLICANT) V. NATIONAL GROCERS COMPANY LIMITED AND ERIC HINTON CARRYING ON BUSINESS IN PARTNERSHIP UNDER THE FIRM NAME AND STYLE OF HINTON'S RED AND WHITE FOODMASTER (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES AT LONDON, SAVE AND EXCEPT STORE MANAGER, PERSONS ABOVE THE RANK OF STORE MANAGER, MEAT DEPARTMENT EMPLOYEES, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (26 EMPLOYEES IN THE UNIT).

3624-73-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. CENTRAL ALGOMA BOARD OF EDUCATION (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN ITS MAINTENANCE, SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR." (20 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR PURPOSES OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE RESPONDENT IS NOT THE EMPLOYER OF THE CAFETERIA STAFF AND THAT ACCORDINGLY THE CAFETERIA STAFF IS NOT INCLUDED IN THE BARGAINING UNIT.).

3626-73-R: SERVICE EMPLOYEES UNION, LOCAL 204 AFFILIATED WITH A.F. OF L. C.I.O. C.L.C. (APPLICANT) V. BESTVIEW HOLDINGS LIMITED (RESPONDENT) V. CHRISTIAN LABOUR ASSOCIATION OF CANADA (INTERVENER).

UNIT: "ALL EMPLOYEES OF BESTVIEW HOLDINGS LIMITED EMPLOYED IN BESTVIEW LODGE NURSING HOME IN THE CITY OF OSHAWA, SAVE AND EXCEPT PROFESSIONAL NURSING STAFF, PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, SUPERVISORS, THOSE ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (34 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

3627-73-R: SERVICE EMPLOYEES UNION LOCAL 204 AFFILIATED WITH A.F. OF L., C.I.O. C.L.C. (APPLICANT) V. MODERN BUILDING CLEANING (RESPONDENT).

UNIT: "ALL EMPLOYEES OF MODERN BUILDING CLEANING LOCATED AT 186 THORNTON ROAD SOUTH, OSHAWA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (3 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

3630-73-R: CANADIAN FOOD AND ALLIED WORKERS LOCAL UNION 175, CHARTERED BY THE AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA (APPLICANT) V. INTERCITY FOOD SERVICES INC. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RESTAURANTS IN THE CITY OF CAMBRIDGE (GALT), SAVE AND EXCEPT HEAD HOSTESSES, PERSONS ABOVE THE RANK OF HEAD HOSTESS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (31 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

3631-73-R: AMALGAMATED CLOTHING WORKERS OF AMERICA (APPLICANT) V. LEVI STRAUSS OF CANADA, INC. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT CORNWALL, SAVE AND EXCEPT SHIPPERS, RECEIVERS, STOCK EMPLOYEES, INSTRUCTORS OR TRAINERS, MECHANICS, QUALITY ASSURANCE EMPLOYEES, FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF FOREMAN AND FORELADY, TRUCKERS, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (77 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

3635-73-R: OFFICE & PROFESSIONAL EMPLOYEES INTERNATIONAL UNION LOCAL 343 (APPLICANT) V. LABORERS' PENSION FUND OF CENTRAL AND EASTERN CANADA (RESPONDENT).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT MANAGER AND PERSONS ABOVE THE RANK OF MANAGER." (2 EMPLOYEES IN THE UNIT).

3639-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1059 (APPLICANT) V. INSPIRATION DRILLING OPERATION, DRESSER INDUSTRIAL PRODUCTS LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

3651-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL UNION No. 597 (APPLICANT) V. CARPAN MANAGEMENT CONSULTANTS LIMITED (RESPONDENT).



UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF ONTARIO (EXCEPT THE TOWNSHIPS OF PICKERING, RAMA, MARA AND THORAH) AND THE COUNTY OF DURHAM (EXCEPT THE TOWNSHIP OF HOPE), SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

3656-73-R: THE NON-ACADEMIC STAFF ASSOCIATION OF THE WATERLOO COUNTY BOARD OF EDUCATION (APPLICANT) V. THE WATERLOO COUNTY BOARD OF EDUCATION (RESPONDENT) V. CUSTODIANS & MAINTENANCE ASSOCIATION, WATERLOO COUNTY (INTERVENER).

UNIT: "ALL FULL-TIME NON-ACADEMIC OFFICE, CLERICAL, SECRETARIAL, AND TECHNICAL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT THE ADMINISTRATOR OF BUSINESS SERVICES AND PERSONS ABOVE THE RANK OF ADMINISTRATOR OF BUSINESS SERVICES." (212 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

3657-73-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. ONTARIO HUMANE SOCIETY (THE ONTARIO SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS) (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BRANTFORD, SAVE AND EXCEPT MANAGER, PERSONS ABOVE THE RANK OF MANAGER AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (6 EMPLOYEES IN THE UNIT).

3666-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. CLEARWAY CONSTRUCTION LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND CONSTRUCTION LABOURERS ENGAGED IN BUILDING PROJECTS." (3 EMPLOYEES IN THE UNIT).

3672-73-R: THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS LOCAL UNION 721 (APPLICANT) V. HOISTMASTER LIMITED (RESPONDENT).

UNIT: "ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

3683-73-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. SARNIA CABINETS (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF SARNIA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (13 EMPLOYEES IN THE UNIT).

3690-73-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. OLYMPIA AND YORK DEVELOPMENTS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT ONE YONGE STREET (STAR BUILDING), METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, ASSISTANT SUPERINTENDENT, PERSONS ABOVE THE RANK OF FOREMAN AND ASSISTANT SUPERINTENDENT, OFFICE AND SALES STAFF, SECURITY OFFICERS AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (19 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

3694-73-R: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS, LOCAL 419 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. PEOPLES PRODUCE COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (11 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES).

3697-73-R: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS UNION, LOCAL 419 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. NATIONAL GROCERS COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF CHINGUACOUSY, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, AND EMPLOYEES COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT." (6 EMPLOYEES IN THE UNIT). (THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT PERSONS CLASSIFIED BY THE RESPONDENT AS PROGRAMMERS AND PROGRAMME ANALYSTS ARE EXCLUDED FROM THE BARGAINING UNIT ON THE GROUNDS THAT THEY ARE PART OF THE HEAD OFFICE STAFF AND ARE NOT APPROPRIATE FOR INCLUSION IN THE BARGAINING UNIT IN THIS MATTER.).

3715-73-R: TEAMSTERS LOCAL UNION 879 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. CANADIAN SILK MANUFACTURING COMPANY LIMITED (RESPONDENT) V. LOCAL 772, INTERNATIONAL UNION OF OPERATING ENGINEERS (INTERVENER).

UNIT: "ALL OFFICE EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT ACCOUNTS RECEIVABLE MANAGER, SERVICE AND DELIVERY MANAGER, MARKETING MANAGER, OFFICE MANAGER, SUPERVISOR OF TOWEL RECORD DEPARTMENT, SUPERVISOR OF GARMENT RECORD DEPARTMENT, EXECUTIVE SECRETARY TO THE VICE-PRESIDENT, PERSONS ABOVE THOSE RANKS, SALESMEN, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL

VACATION PERIOD AND THOSE EMPLOYEES COVERED BY SUBSISTING COLLECTIVE AGREEMENTS WITH TEAMSTERS LOCAL 879 AND LOCAL 772, INTERNATIONAL UNION OF OPERATING ENGINEERS." (15 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

3717-73-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 837 (APPLICANT) V. PEEL EARTH BORING LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF NIAGARA AND THE COUNTY OF HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

3718-73-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. BELGIUM STANDARD INDUSTRIES (ONTARIO) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN STRATFORD, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (26 EMPLOYEES IN THE UNIT).

3722-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1081 (APPLICANT) V. COOPER CONSTRUCTION COMPANY (EASTERN) LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF WATERLOO EXCEPT PART OF BEVERLY TOWNSHIP ANNEXED BY NORTH DUMFRIES TOWNSHIP, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

3724-73-R: OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA LOCAL UNION NO. 124, OTTAWA (APPLICANT) V. JOSIP CONCRETE FLOOR (RESPONDENT).

UNIT: "ALL CEMENT MASONS AND CEMENT MASONS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

3725-73-R: LOCAL UNION 800 OF THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA (APPLICANT) V. EQUIPPED PLUMBING AND HEATING LIMITED (RESPONDENT).

UNIT: "ALL PLUMBERS AND PLUMBERS' APPRENTICES, STEAMFITTERS AND STEAMFITTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A RADIUS OF THIRTY-FIVE MILES FROM THE CITY OF SUDBURY FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING



FOREMAN." (10 EMPLOYEES IN THE UNIT). (FOR THE PURPOSES OF CLARITY THE BOARD DECLARED THAT WELDERS WORKING AT THE PLUMBING AND STEAMFITTING TRADES ARE EMPLOYEES INCLUDED IN THE BARGAINING UNIT.).

3739-73-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. NAPEV CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF ONTARIO (EXCEPT THE TOWNSHIPS OF PICKERING, RAMA, MARA AND THORAH) AND THE COUNTY OF DURHAM (EXCEPT THE TOWNSHIP OF HOPE), SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

3745-73-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL UNION 493 (APPLICANT) V. DINEEN CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY MILE RADIUS OF THE NORTH BAY POST OFFICE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (23 EMPLOYEES IN THE UNIT).

3753-73-R: THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA - LOCAL UNION 628 (APPLICANT) V. NORTH WEST PLUMBING, HEATING AND VENTILATION CONTRACTOR (RESPONDENT).

UNIT: "ALL PLUMBERS AND PLUMBERS' APPRENTICES, STEAMFITTERS AND STEAMFITTERS' APPRENTICES, PIPEFITTERS AND PIPEFITTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF KENORA, INCLUDING THE PATRICIA PORTION, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

3754-73-R: THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL UNION 527 (APPLICANT) V. KITCHENER MECHANICAL CONTRACTORS LIMITED (RESPONDENT).

UNIT: "ALL PLUMBERS AND PLUMBERS' APPRENTICES, STEAMFITTERS AND STEAMFITTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF WATERLOO EXCEPT PART OF BEVERLY TOWNSHIP ANNEXED BY NORTH DUMFRIES TOWNSHIP, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (8 EMPLOYEES IN THE UNIT).

3763-73-R: CANADIAN FOOD AND ALLIED WORKERS LOCAL UNION 175, CHARTERED BY THE AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA (APPLICANT) V. INTERCITY FOOD SERVICES INC. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RESTAURANTS AT CAMBRIDGE, REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (14 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

3776-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 247 (APPLICANT) V. DALTON ENGINEERING AND CONSTRUCTION COMPANY (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN PRINCE EDWARD COUNTY AND THE TOWNSHIPS OF LAKE, TUDOR AND GRIMSTHORPE AND ALL LANDS SOUTH THEREOF IN THE COUNTY OF HASTINGS, AND THE TOWNSHIPS OF PERCY AND CRAMAHE AND ALL LANDS EAST THEREOF IN THE UNITED COUNTIES OF NORTHUMBERLAND AND DURHAM, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

3794-73-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1669 (APPLICANT) V. INTRUSION-PREPAK LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF THUNDER BAY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

3798-73-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. CANA INDUSTRIAL CONTRACTORS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF LENNOX AND ADDINGTON, AND THE COUNTY OF FRONTENAC AND THE TOWNSHIPS OF REAR OF LEEDS AND LANSDOWNE, REAR OF YONGE AND ESCOTT, AND ALL LANDS SOUTH THEREOF IN THE UNITED COUNTIES OF LEEDS AND GRENVILLE ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

3807-73-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. WAYNCO LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF WATERLOO EXCEPT PART OF BEVERLY TOWNSHIP ANNEXED BY NORTH DUMFRIES TOWNSHIP ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (26 EMPLOYEES IN THE UNIT).

3825-73-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. GEORGE KLEIBOER MECHANICAL CONTRACTOR (RESPONDENT).

UNIT: "ALL PLUMBERS AND PLUMBERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF GREY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

APPLICATIONS CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

3208-72-R: UNITED TEXTILE WORKERS OF AMERICA (APPLICANT) V. NORFOLK KNITTERS LIMITED (RESPONDENT) V. EMPLOYEES ASSOCIATION OF NORFOLK KNITTERS LIMITED (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PORT DOVER, SAVE AND EXCEPT FOREMEN, SUPERVISORS, PERSONS ABOVE THE RANKS OF FOREMAN AND SUPERVISOR, OFFICE STAFF, STUDENTS EMPLOYED DURING OFF-SCHOOL HOURS AND DURING THE SCHOOL VACATION PERIOD, AND STUDENTS ENGAGED IN A RECOGNIZED CO-OPERATIVE TRAINING PROGRAM." (46 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		43
NUMBER OF PERSONS WHO CAST BALLOTS	33	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	25	
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	8	

3492-72-R: KRAUS CARPET EMPLOYEES ASSOCIATION (APPLICANT) V. WATERLOO SPINNING MILLS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF WATERLOO, SAVE AND EXCEPT ASSISTANT FOREMEN, PERSONS ABOVE THE RANK OF ASSISTANT FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (88 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		87
NUMBER OF PERSONS WHO CAST BALLOTS	76	
NUMBER OF SPOILED BALLOTS	3	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	63	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	10	

3518-72-P: CANADIAN UNION OF OPERATING ENGINEERS, LOCAL 101 (APPLICANT) V. CRYOVAC DIVISION - GRACE CHEMICALS LIMITED (RESPONDENT) V. PRINTING SPECIALTIES AND PAPER PRODUCTS UNION, LOCAL 466 (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT MISSISSAUGA, SAVE AND EXCEPT STATIONARY ENGINEERS, FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, ENGINEERS, OFFICE STAFF AND SALES STAFF." (173 EMPLOYEES IN THE UNIT).



NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	157
NUMBER OF PERSONS WHO CAST BALLOTS	150
NUMBER OF SPOILED BALLOTS	1
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	113
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	36

3545-72-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE)  
(APPLICANT) V. NEO CHROME LIMITED, NEO MACHINE LIMITED, AND NEO ENGRAVING  
LIMITED (RESPONDENTS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE CITY OF HAMILTON, SAVE AND  
EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF,  
PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS  
EMPLOYED DURING THE SCHOOL VACATION PERIOD." (105 EMPLOYEES IN THE UNIT).  
(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	99
NUMBER OF PERSONS CAST BALLOTS	93
NUMBER OF SPOILED BALLOTS	1
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	64
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	28

3584-73-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. MOHAWK  
HOSPITAL SERVICES INC. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN ITS LINEN SUPPLY &  
SERVICE DIVISION AT CHEDMAC DRIVE, HAMILTON, SAVE AND EXCEPT FOREMEN,  
PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, LABORATORY STAFF, STU-  
DENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, PERSONS REGULARLY EM-  
PLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS WORKING UNDER A  
CO-OPERATIVE EDUCATIONAL PROGRAMME." (169 EMPLOYEES IN THE UNIT).  
(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	154
NUMBER OF PERSONS WHO CAST BALLOTS	133
NUMBER OF SPOILED BALLOTS	2
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	84
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	47

3585-73-R: LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, S.E.I.U., A.F.L., C.I.O., C.L.C. (APPLICANT) V. QUEEN'S AVE MANOR LTD. (RESPONDENT).

- AND -

3605-73-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. QUEEN'S AVE MANOR LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, REGISTERED NURSES, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (31 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	32
NUMBER OF PERSONS WHO CAST BALLOTS	26
NUMBER OF BALLOTS MARKED IN FAVOUR OF LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220	15
NUMBER OF BALLOTS MARKED IN FAVOUR OF CHRISTIAN LABOUR ASSOCIATION OF CANADA	10
NUMBER OF BALLOTS MARKED IN FAVOUR OF NO TRADE UNION	1

3612-73-R: MARBLE MASONS TILE LAYERS AND TERRAZZO WORKERS UNION No. 31 (APPLICANT) V. ROGERS PLASTERING CONTRACTORS LIMITED (RESPONDENT) V. THE OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 117 (INTERVENER).

UNIT: "ALL PLASTERERS AND PLASTERERS' APPRENTICES OF THE RESPONDENT EMPLOYED AT OR WORKING OUT OF METROPOLITAN TORONTO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (16 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	15
NUMBER OF PERSONS WHO CAST BALLOTS	15
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	14
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	1

#### APPLICATIONS CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

1970-72-R: NURSES' ASSOCIATION PETERBOROUGH CIVIC HOSPITAL (APPLICANT) V. PETERBOROUGH CIVIC HOSPITAL (RESPONDENT) V. ONTARIO BRANCH, CANADIAN PHYSIOTHERAPY ASSOCIATION (INTERVENER).

UNIT #2: "ALL REGISTERED AND GRADUATE NURSES EMPLOYED BY THE RESPONDENT ENGAGED IN NURSING AND TEACHING AT PETERBOROUGH REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK, SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR." (14 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		92
NUMBER OF PERSONS WHO CAST BALLOTS	52	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	47	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	5	

(BARGAINING UNIT #1 - SEE BARGAINING UNITS CERTIFIED - NO VOTE CONDUCTED).

2446-72-R: LUMBER AND SAWMILL WORKERS UNION, LOCAL 2995 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. LECOUCRS LUMBER COMPANY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS WOODS OPERATIONS IN THE TOWNSHIP OF ROGERS AND THOSE TOWNSHIPS IMMEDIATELY ADJACENT THERETO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND SCALERS." (35 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		5
NUMBER OF PERSONS WHO CAST BALLOTS	5	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	3	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	2	

2775-72-R: ASSOCIATION OF NURSES ST. JOSEPH'S HOSPITAL, LONDON (APPLICANT) V. THE SISTERS OF ST. JOSEPH OF THE DIOCESE OF LONDON, IN ONTARIO, OWNERS AND OPERATORS, ST. JOSEPH'S HOSPITAL, LONDON (RESPONDENT).

UNIT: "ALL LAY, REGISTERED AND GRADUATE NURSES EMPLOYED IN A NURSING CAPACITY AT ST. JOSEPH'S HOSPITAL BY THE RESPONDENT IN LONDON, SAVE AND EXCEPT HEAD NURSES, PERSONS ABOVE THE RANK OF HEAD NURSE, NURSES IN CHARGE INTENSIVE CARE NURSERY, CHARGE NURSE OF DIALYSIS UNIT, NURSE IN CHARGE CENTRAL SUPPLY, EMPLOYEE HEALTH NURSE, NURSES ON THE INTRA-VENOUS THERAPY TEAM AND NURSES COVERED BY SUBSISTING COLLECTIVE AGREEMENTS BETWEEN THE RESPONDENT AND THE NURSES' ASSOCIATION ST. JOSEPH'S HOSPITAL, LONDON, ONTARIO." (70 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS'		
LIST		34
NUMBER OF PERSONS WHO CAST BALLOTS	23	
BALLOTS SEGREGATED AND NOT COUNTED	7	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	15	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	1	



2798-72-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) V. SQUARE D COMPANY CANADA LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL OFFICE EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT OFFICE EMPLOYEES COVERED BY A COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE APPLICANT AND ITS LOCAL 511, SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, SECRETARIES TO DEPARTMENT MANAGERS, PERSONNEL DEPARTMENT, ENGINEERS, FIELD SALES AND SALES TRAINEE PERSONNEL, PLANT NURSE AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (32 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		25
NUMBER OF PERSONS WHO CAST BALLOTS	24	
BALLOTS SEGREGATED AND NOT COUNTED	2	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	14	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	8	

2938-72-R: LUMBER AND SAWMILL WORKERS' UNION, LOCAL 2995 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. SPRUCE-DALE LUMBER AND COMPANY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS SAWMILL, PLANING MILL AND YARD OPERATIONS AT MATTICE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (30 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		30
NUMBER OF PERSONS WHO CAST BALLOTS	30	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	16	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	14	

[1973] 2 OLRB M.R. - PAGE 275.

3311-72-R: TORONTO NEWSPAPER GUILD, LOCAL 87 (APPLICANT) V. CCH CANADIAN LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS EDITORIAL DEPARTMENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT THE MANAGING EDITOR, PERSONS ABOVE THE RANK OF MANAGING EDITOR, SECRETARY TO THE MANAGING EDITOR, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (87 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	24
NUMBER OF PERSONS WHO CAST BALLOTS	23
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	14
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	9

3317-72-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. HALIBURTON, KAWARTHA, PINE RIDGE DISTRICT HEALTH UNIT (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF HALIBURTON, VICTORIA, AND THE UNITED COUNTIES OF NORTHUMBERLAND AND DURHAM, SAVE AND EXCEPT PUBLIC HEALTH NURSES, REGISTERED NURSES, CHIEF PUBLIC HEALTH INSPECTOR AND PERSONS ABOVE THE RANK OF CHIEF PUBLIC HEALTH INSPECTOR, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (35 EMPLOYEES IN THE UNIT). (FOR THE PURPOSE OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES: (A) THAT THE SECRETARY TO THE MEDICAL OFFICER OF HEALTH AND THE SECRETARY TO THE BUSINESS ADMINISTRATOR ARE EXCLUDED FROM THE BARGAINING UNIT; ... ).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	30
NUMBER OF PERSONS WHO CAST BALLOTS	30
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	18
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	12

3524-72-R: GRAPHIC ARTS INTERNATIONAL UNION, LOCAL 247 (APPLICANT) V. HUNTER PRINTING LONDON LTD. (RESPONDENT) V. INTERNATIONAL PRINTING PRESSMEN & ASSISTANTS' UNION ON BEHALF OF LOCAL 510 (INTERVENER #1) V. LONDON TYPOGRAPHICAL UNION No. 133 (INTERVENER #2).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT GENERAL MANAGER, PERSONS ABOVE THE RANK OF GENERAL MANAGER, OFFICE AND SALES STAFF, AND PERSONS COVERED BY SUBSISTING COLLECTIVE AGREEMENTS BETWEEN THE RESPONDENT AND INTERNATIONAL PRINTING PRESSMEN & ASSISTANTS' UNION ON BEHALF OF LOCAL 510, AND THE RESPONDENT AND LOCAL #226 OF THE INTERNATIONAL BROTHERHOOD OF BOOKBINDERS." (4 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	4
NUMBER OF PERSONS WHO CAST BALLOTS	4
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	4
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER #2	0

3587-73-R: CHATHAM CONSTRUCTION WORKERS ASSOCIATION, LOCAL #53, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. RIVERDALE ELECTRIC COMPANY LIMITED (RESPONDENT) V. INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL #773 (INTERVENER).

UNIT: "ALL ELECTRICIANS AND ELECTRICIANS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF ESSEX, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	2
NUMBER OF PERSONS WHO CAST BALLOTS	2
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	2
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	0

#### APPLICATIONS FOR CERTIFICATION DISMISSED DURING MAY

##### No Vote Conducted

1742-71-R: THE OIL CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION (APPLICANT) V. THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO (RESPONDENT) V. CANADIAN UNION OF PUBLIC EMPLOYEES - C.L.C. ONTARIO HYDRO EMPLOYEES' UNION LOCAL 1000 (INTERVENER #1) V. THE CANADIAN UNION OF OPERATING ENGINEERS (INTERVENER #2). (291 EMPLOYEES).

[1973] 2 OLRB M.R. - PAGE 231.

2896-72-R: INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES, LOCAL UNION 1891 (APPLICANT) V. SUBURBAN LATHING & ACOUSTICS LTD. (RESPONDENT). (2 EMPLOYEES).

2907-72-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 493 (APPLICANT) V. BANDIERA & ASSOCIATES TORONTO LTD. (RESPONDENT). (7 EMPLOYEES).

3022-72-R: NORTHERN ONTARIO ELECTRICAL UNION (APPLICANT) V. R. J. GLADU ELECTRIC LIMITED (RESPONDENT) V. THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION 1687 (INTERVENER). (9 EMPLOYEES).

[1973] 2 OLRB M.R. - PAGE 263.

3364-72-R: UNITED INDUSTRIAL WORKERS LOC. 2A AFFILIATED WITH UNITED BRICK AND CLAY WORKERS OF AMERICA AFL-CIO (APPLICANT) V. PACIFIC PLATING LIMITED (RESPONDENT). (87 EMPLOYEES).

[1973] 2 OLRB M.R. - PAGE 286.



3467-72-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. SIVACO (ONTARIO) LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (39 EMPLOYEES).

[1973] 2 OLRB M.R. - PAGE 279.

3551-73-R: GENERAL TRUCK DRIVERS LOCAL 938 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. CHARTERWAYS CO. LIMITED (RESPONDENT).

- AND -

3552-73-R: GENERAL TRUCK DRIVERS LOCAL 938 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. CHARTERWAYS CO. LIMITED (RESPONDENT). (62 EMPLOYEES).

[1973] 2 OLRB M.R. - PAGE 285.

3570-73-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, U.A.W. (APPLICANT) V. CHRYSLER CANADA LTD. ETOBICOKE CASTING PLANT (RESPONDENT). (4 EMPLOYEES).

3640-73-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. WHITNEY MAINTENANCE LIMITED (RESPONDENT). (1 EMPLOYEE).

3662-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 837 (APPLICANT) V. NORTHLAND BILULITHIC LIMITED (RESPONDENT). (4 EMPLOYEES).

3783-73-R: SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION LOCAL UNION 537 (APPLICANT) V. BROWN-JARVIS ROOFING COMPANY (RESPONDENT). (13 EMPLOYEES).

3784-73-R: SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION LOCAL UNION 537 (APPLICANT) V. GEO. ORTH LIMITED (RESPONDENT). (4 EMPLOYEES).

3785-73-R: SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION LOCAL UNION 537 (APPLICANT) V. ED CHRISTENSEN ROOFING LIMITED (RESPONDENT). (13 EMPLOYEES).

3786-73-R: SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION LOCAL UNION 537 (APPLICANT) V. BOSCO ROOFING (RESPONDENT). (5 EMPLOYEES).

3787-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) V. LIQUID CARBONIC CANADA LIMITED LIMITEE (RESPONDENT). (4 EMPLOYEES).

3833-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION No. 597 (APPLICANT) V. NAPEV CONSTRUCTION (RESPONDENT). (3 EMPLOYEES).

3834-73-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 749 (APPLICANT) V. NIAGARA POOL SERVICE AND SUPPLIES (RESPONDENT). (4 EMPLOYEES).

CERTIFICATION DISMISSED SUBSEQUENT TO PRE-HEARING VOTE

3344-72-R: TEXTILE WORKERS UNION OF AMERICA, CLC, AFL-CIO (APPLICANT)  
V. BURLINGTON CARPET MILLS CANADA LTD. (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT IN ITS PLANT IN THE TOWNSHIP OF CHINGUACOUSY, SAVE AND EXCEPT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE AND CLERICAL STAFF, SALES STAFF, TECHNICAL STAFF, EMPLOYEES REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (235 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		210
NUMBER OF PERSONS WHO CAST BALLOTS	207	
NUMBER OF SPOILED BALLOTS	2	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	76	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	129	

3489-72-R: LOCAL UNION 894, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, A.F.L.-C.I.O.-C.L.C. (APPLICANT) V. TOZER ELECTRIC LIMITED (RESPONDENT).

VOTING CONSTITUENCY: "ALL ELECTRICIANS AND ELECTRICIANS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF ONTARIO (EXCEPT THE TOWNSHIPS OF PICKERING, RAMA, MARA AND THORAH) AND THE COUNTY OF DURHAM (EXCEPT THE TOWNSHIP OF HOPE), SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (9 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON VOTERS'		
LIST		9
NUMBER OF PERSONS WHO CAST BALLOTS	9	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	3	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	6	

3564-73-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. KINNEAR INDUSTRIES CORPORATION LIMITED (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT CAMBRIDGE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, FIELD ERECTION SERVICE PERSONNEL, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (16 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	18
NUMBER OF PERSONS WHO CAST BALLOTS	15
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	3
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	12

3698-73-R: INTERNATIONAL UNION, UNITED PLANT GUARD WORKERS OF AMERICA, AND AMALGAMATED PLANT GUARDS, LOCAL 1958 (APPLICANT) V. GENERAL MOTORS OF CANADA, LIMITED (RESPONDENT).

VOTING CONSTITUENCY: "ALL PLANT PROTECTION EMPLOYEES EMPLOYED BY THE RESPONDENT AT ITS TRANSMISSION PLANT IN WINDSOR, SAVE AND EXCEPT SERGEANT, PERSONS ABOVE THE RANK OF SERGEANT, AND RECEPTIONIST." (12 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	12
NUMBER OF PERSONS WHO CAST BALLOTS	12
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	4
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	8

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

3348-72-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. KOHLER OF CANADA LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWN OF MISSISSAUGA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (50 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	51
NUMBER OF PERSONS WHO CAST BALLOTS	51
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	24
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	27

3368-72-R: INTERNATIONAL BROTHERHOOD OF PAINTERS & ALLIED TRADES LOCAL UNION 1891 (APPLICANT) V. LORMAC PAINTING & DECORATING LTD. (RESPONDENT).

UNIT: "ALL PAINTERS AND PAINTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE



AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (8 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS'	
LIST	4
NUMBER OF PERSONS WHO CAST BALLOTS	4
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	0
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	4

3531-72-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. MERCURY MARINE LIMITED, DISTRIBUTION SECTION (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN MISSISSAUGA, EMPLOYED IN THE DISTRIBUTION SECTION, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND PERSONS COVERED BY SUBSISTING COLLECTIVE AGREEMENTS BETWEEN UAW AND MERCURY MARINE LIMITED - MERCURY MARINE PIPE DIVISION OCT. 15/72 THRU DEC. 15/73, AND KIEKHAUFER MERCURY OF CANADA LIMITED, JUNE 16/71 THRU JUNE 15/73." (9 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS'	
LIST	8
NUMBER OF PERSONS WHO CAST BALLOTS	8
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	2
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	6

#### APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING MAY

3604-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL UNION No. 597 (APPLICANT) V. LANWELL INVESTMENTS LTD. (RESPONDENT). (NO EMPLOYEES).

3679-73-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 493 (APPLICANT) V. GAFFNEY CONSTRUCTION LIMITED (RESPONDENT). (16 EMPLOYEES).

3707-73-R: OFFICE & PROFESSIONAL EMPLOYEES INTERNATIONAL UNION (APPLICANT) V. SILVERWOOD INDUSTRIES LTD. (RESPONDENT). (9 EMPLOYEES).

3708-73-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. CONTRACTING PLASTERERS' ASSOCIATION OF TORONTO BEING THOSE COMPANIES REFERRED TO IN SCHEDULE "A" ATTACHED HERETO (RESPONDENT). (46 EMPLOYEES).

3723-73-R: MILLWRIGHT'S LOCAL UNION 2309, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. DANFORTH INSTALLERS (RESPONDENT). (NO EMPLOYEES).

3738-73-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. LIBERMAN PLASTERING LTD. (RESPONDENT). (17 EMPLOYEES).

3746-73-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. COMBUSTION ENGINEERING - SUPERHEATER LTD. (RESPONDENT). (11 EMPLOYEES).

3751-73-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. OLYMPIA AND YORK DEVELOPMENTS LIMITED (RESPONDENT). (3 EMPLOYEES).

3755-73-R: THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA - LOCAL UNION 628 (APPLICANT) V. R. "BENNY" BENOIT PLUMBING & HEATING (RESPONDENT). (2 EMPLOYEES).

3779-73-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. LAURENTIAN NURSING HOME (RESPONDENT) V. BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 478 AFFILIATED WITH A.F. OF L., C.I.O., C.L.C. (INTERVENER). (45 EMPLOYEES).

3793-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 527 (APPLICANT) V. LAURENCE & FRERES CONST. LTEE. (RESPONDENT). (2 EMPLOYEES).

3799-73-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. ECOLOGY ENGINEERING & CONSTRUCTION LTD. (RESPONDENT). (6 EMPLOYEES).

3852-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1059 (APPLICANT) V. ECOLOGY ENGINEERING AND CONSTRUCTION LIMITED (RESPONDENT). (29 EMPLOYEES).

#### APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED OF

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3333-72-R: FLORENCE M. SALISBURY (APPLICANT) V. RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, LOCAL 915, OF THE RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, A.F.L.-C.I.O.-C.L.C. (RESPONDENT) V. NATIONAL GROCERS COMPANY LIMITED (INTERVENER). (DISMISSED).

UNIT: "ALL OFFICE EMPLOYEES OF NATIONAL GROCERS COMPANY LIMITED AT ITS WAREHOUSE AT NEW LISKEARD, SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR." (6 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS'  
LIST

5

NUMBER OF PERSONS WHO CAST BALLOTS

4

NUMBER OF BALLOTS MARKED IN FAVOUR  
OF RESPONDENT

3

NUMBER OF BALLOTS MARKED AGAINST  
RESPONDENT

1

3504-72-R: ROBERT HEWITT (APPLICANT) V. THE RETAIL, WHOLESALE BAKERY AND CONFECTIONERY WORKERS' UNION, LOCAL 461 OF THE RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (RESPONDENT) V. WESTON BAKERIES LIMITED (INTERVENER) V. GROUP OF EMPLOYEES (OBJECTORS). (141 EMPLOYEES). (DISMISSED).

3549-73-R: YVON COTE ON BEHALF OF A GROUP OF EMPLOYEES (APPLICANT) V. INTERNATIONAL WOODWORKERS OF AMERICA (RESPONDENT) V. CHAPLEAU LUMBER COMPANY LIMITED (INTERVENER) V. GROUP OF EMPLOYEES (OBJECTORS). (114 EMPLOYEES). (DISMISSED).

3731-73-R: CONSUMERS' COMPUTING LIMITED FORMERLY CONSUMERS' COMPUTER LIMITED (APPLICANT) V. LOCAL 513, INTERNATIONAL CHEMICAL WORKERS' UNION (RESPONDENT). (58 EMPLOYEES). (GRANTED).

APPLICATIONS FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF DURING MAY

3321-72-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. ELGIN MOTORS COMPANY LIMITED (RESPONDENT) V. ELGIN MOTORS MECHANICS INDEPENDENT ASSOCIATION (PREDECESSOR TRADE UNION). (DISMISSED).

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3526-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE HALTON COUNTY BOARD OF EDUCATION (RESPONDENT). (GRANTED).

3601-73-R: COMMUNICATIONS WORKERS OF CANADA (APPLICANT) V. TAS COMMUNICATIONS SERVICES, A DIVISION OF INTERNATIONAL UTILITIES CORPORATION (RESPONDENT) V. COMMUNICATIONS WORKERS OF AMERICA (PREDECESSOR TRADE UNION). (GRANTED).

3602-73-R: COMMUNICATIONS WORKERS OF CANADA (APPLICANT) V. TAS COMMUNICATIONS SERVICES, A DIVISION OF INTERNATIONAL UTILITIES CORPORATION (RESPONDENT) V. COMMUNICATIONS WORKERS OF AMERICA (PREDECESSOR TRADE UNION). (GRANTED).

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING MAY

3675-73-U: BENDIX-WESTINGHOUSE AUTOMOTIVE AIR BRAKE COMPANY OF CANADA LIMITED (APPLICANT) V. INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE



AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (RESPONDENT).  
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3782-73-U: ILENA CONSTRUCTION LTD. (APPLICANT) V. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (RESPONDENT). (WITHDRAWN).

APPLICATION FOR DECLARATION THAT LOCK-OUT UNLAWFUL DISPOSED OF DURING

MAY

3619-73-U: UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL UNION 527 (APPLICANT) V. MCKENNA BROTHERS LIMITED (RESPONDENT). (DISMISSED).

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APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING MAY

2802-72-U: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. MAXIM ELECTRICAL CONSTRUCTION CO. LTD. (RESPONDENT). (WITHDRAWN).

3386-72-U: R. J. GLADU ELECTRIC LIMITED (APPLICANT) V. LOCAL UNION 1687 - INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOU POPOVITCH AND GUY ROBERGE (RESPONDENTS). (DISMISSED).

3638-73-U: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. ACME SEELEY LIMITED (RESPONDENT). (WITHDRAWN).

3676-73-U: BENDIX-WESTINGHOUSE AUTOMOTIVE AIR BRAKE COMPANY OF CANADA LIMITED (APPLICANT) V. INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (RESPONDENT). (WITHDRAWN).

3677-73-U: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. CLOVERLAWN INVESTMENTS LIMITED (RESPONDENT). (WITHDRAWN).

COMPLAINTS UNDER SECTION 79 (UNFAIR LABOUR PRACTICE) DISPOSED OF DURING

MAY

2803-72-U: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (COMPLAINANT) V. MAXIM ELECTRICAL CONSTRUCTION CO. LTD. (RESPONDENT). (WITHDRAWN).

3035-72-U: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 2679 (COMPLAINANT) V. REFF PRODUCTS LIMITED (RESPONDENT). (DISMISSED).

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3105-72-U: LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220 S.E.I.U. - A.F.L. - C.I.O. - C.L.C. (COMPLAINANT) V. CORPORATION OF THE COUNTY OF ELGIN (RESPONDENT). (GRANTED).

3193-72-U: BRYCE MUGFORD (COMPLAINANT) V. THAMES VALLEY BEVERAGES (LONDON, ONTARIO) (RESPONDENT).

- AND -

3195-72-U: JOHN ROUSSEL (COMPLAINANT) V. THAMES VALLEY BEVERAGES (LONDON, ONTARIO) (RESPONDENT). (DISMISSED).

3247-72-U: LOCAL 772, INTERNATIONAL UNION OF OPERATING ENGINEERS, (COMPLAINANT) V. BRANTFORD GENERAL HOSPITAL (RESPONDENT). (WITHDRAWN).

3278-72-U: LOCAL UNION 633 AND LOCAL UNION 175 CANADIAN FOOD AND ALLIED WORKERS CHARTERED BY AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (COMPLAINANT) V. DARRIGO'S FOOD MARKETS ONTARIO LTD. (RESPONDENT). (WITHDRAWN).

3294-72-U: EDWARD REIDHEAD (COMPLAINANT) V. THAMES VALLEY BEVERAGES LIMITED, (LONDON, ONTARIO) (RESPONDENT). (WITHDRAWN).

3295-72-U: KARL PURDON (COMPLAINANT) V. THAMES VALLEY BEVERAGES LIMITED (LONDON, ONTARIO) (RESPONDENT). (WITHDRAWN).

3360-72-U: CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) V. BESTVIEW HOLDINGS LTD. (METRO LODGE) (RESPONDENT).

- AND -

3306-72-U: CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) V. BESTVIEW HOLDINGS LTD. (METRO LODGE) (RESPONDENT).

- AND -

3307-72-U: CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) V. BESTVIEW HOLDINGS LTD. (METRO LODGE) (RESPONDENT).

- AND -

3308-72-U: CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) V. BESTVIEW HOLDINGS LTD. (METRO LODGE) (RESPONDENT).

- AND -

3309-72-U: CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) V. BESTVIEW HOLDINGS LTD. (METRO LODGE) (RESPONDENT).

- AND -

3310-72-U: CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) V. BESTVIEW HOLDINGS LTD. (METRO LODGE) (RESPONDENT). (DISMISSED).

3400-72-U: NATIONAL ASSOCIATION OF BROADCAST EMPLOYEES AND TECHNICIANS, AFL-CIO, CLC (COMPLAINANT) V. THE ONTARIO EDUCATIONAL COMMUNICATIONS AUTHORITY AND INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE MACHINE OPERATORS OF THE UNITED STATES AND CANADA MOTION PICTURE STUDIO PRODUCTION TECHNICIANS LOCAL 873 (RESPONDENTS). (WITHDRAWN).

3414-72-U: CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) V. BARTON PLACE NURSING HOME (RESPONDENT). (WITHDRAWN).

3429-72-U: VERNON FORSYTH (COMPLAINANT) V. THAMES VALLEY BEVERAGES LIMITED (RESPONDENT). (WITHDRAWN).

3430-72-U: PETER O'BRIEN (COMPLAINANT) V. THAMES VALLEY BEVERAGES LIMITED (RESPONDENT). (WITHDRAWN).

3431-72-U: DANIEL LAMONT (COMPLAINANT) V. THAMES VALLEY BEVERAGES LIMITED (RESPONDENT). (WITHDRAWN).

3469-72-U: CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) V. BARTON PLACE NURSING HOME (RESPONDENT). (WITHDRAWN).

3488-72-U: MR. ROBERT BOUILLON (COMPLAINANT) V. UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA AND LOCAL 800 OF THE UNITED ASSOCIATION (RESPONDENT). (WITHDRAWN).

3493-72-U: TEAMSTERS LOCAL UNION 879 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (COMPLAINANT) V. E. & E. SEEGMILLER LTD. (RESPONDENT). (WITHDRAWN).

3494-72-U: MR. LAURENCE FOULDS (COMPLAINANT) V. THE UNITED CEMENT, LIME AND GYPSUM WORKERS INTERNATIONAL UNION, LOCAL #377 (RESPONDENT). (WITHDRAWN).

3515-72-U: CANADIAN BROTHERHOOD OF RAILWAY TRANSPORT AND GENERAL WORKERS (COMPLAINANT) V. JACK WOOD'S EASTWAY PLYMOUTH CHRYSLER LIMITED (RESPONDENT). (WITHDRAWN).

3517-72-U: CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) V. ONTARIO HUMANE SOCIETY (BARRIE BRANCH) (RESPONDENT). (WITHDRAWN).

3563-73-U: CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) V. RYERSON POLYTECHNICAL INSTITUTE (RESPONDENT). (WITHDRAWN).

3678-73-U: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (COMPLAINANT) V. CLOVERLAWN INVESTMENTS LIMITED (RESPONDENT). (WITHDRAWN).

3752-73-U: ALBERT LALONDE (COMPLAINANT) V. THE EXECUTIVE COUNCIL OF LOCAL 895 OF THE CANADIAN UNION OF PUBLIC EMPLOYEES (RESPONDENT). (DISMISSED).

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2930-72-U: MOHAMED SALAH GUINDEHI (COMPLAINANT) V. UNITED STEELWORKERS OF AMERICA LOCAL UNION NO. 7608 (RESPONDENT). (REQUEST DENIED).



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JUNE



# Monthly Report

ONTARIO LABOUR RELATIONS BOARD





CANADIAN  
LAW

ONTARIO LABOUR RELATIONS BOARD REPORTS

A MONTHLY SERIES OF DECISIONS FROM THE  
ONTARIO LABOUR RELATIONS BOARD

CITED [1973] OLRB REP.





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ALLEGED COLLECTIVE AGREEMENT, IN SO FAR AS IT AFFECTS ANY AREA OTHER THAN THE BOARD'S GEOGRAPHIC AREA NUMBER 15, IS NOT A COLLECTIVE AGREEMENT AND IS INVALID. THE APPLICANT INTERPRETED THE ALLEGED COLLECTIVE AGREEMENT AS COVERING ALL EMPLOYEES (RATHER THAN ALL IRONWORKERS) OF THE RESPONDENT IN ONTARIO OR IN THE BOARD'S GEOGRAPHIC AREA NUMBER 29.

12. THE APPLICANT ARGUED THAT SINCE THE INTERVENER DID NOT REPRESENT ANY EMPLOYEES OF THE RESPONDENT IN THE BOARD'S GEOGRAPHIC AREA NUMBER 29, THEREFORE IT WAS NOT ENTITLED TO ENTER INTO A COLLECTIVE AGREEMENT BEYOND THE BOARD'S GEOGRAPHIC AREA NUMBER 15.

13. IN SUPPORT OF ITS POSITION, THE APPLICANT RELIED ON SEVERAL EARLIER DECISIONS OF THE BOARD. THE APPLICANT REFERRED TO THE KINGSWAY PLASTERING Co. LTD. CASE, (1970) OLRB REP. 1360; THE SUNRISE PAVING & CONSTRUCTION Co. LTD. CASE, (1972) OLRB REP. 199; THE NIAGARA CRUSHED STONE (HUMBERSTONE) LTD. CASE, 58 CLLC ¶18,118; THE SOVEREIGN CONSTRUCTION Co. LTD. CASE, 60 CLLC ¶16,168; THE H. G. FRANCIS & SONS LTD. CASE, 60 CLLC ¶16,172 AND THE HARDING BRANTFORD LIMITED CASE, (1966) OLRB REP. 245.

14. THE BOARD HAS CONSIDERED THE REPRESENTATIONS OF THE PARTIES INCLUDING THE DECISIONS REFERRED TO IN PARAGRAPH 13 HEREIN. A CAREFUL EXAMINATION OF THESE DECISIONS, HOWEVER, REVEALS THAT NONE OF THESE DECISIONS IS EITHER IDENTICAL OR EVEN SIMILAR TO THE FACTS OF THIS APPLICATION.

15. THE BOARD FINDS THAT THE RESPONDENT AND THE INTERVENER ARE PARTIES TO A COLLECTIVE AGREEMENT COVERING IRONWORKERS IN THE EMPLOY OF THE RESPONDENT IN AT LEAST THE COUNTIES OF ADDINGTON, CARLETON, DUNDAS, FRONTENAC, GLENGARRY, GRENVILLE, LANARK, LEEDS, LENNOX, PRESCOTT, RENFREW, RUSSELL, STORMONT, AND ALL OF THE COUNTY OF HASTINGS EXCEPT THE TOWNSHIPS OF MARMORA, RAWDON, SIDNEY AND THURLOW.

16. HAVING REGARD TO THE AGREED STATEMENTS OF FACT, THE BOARD FINDS THAT AT THE TIME OF THE SIGNING OF THE COLLECTIVE AGREEMENT, THE INTERVENER WAS THE CERTIFIED BARGAINING AGENT FOR THE EMPLOYEES REFERRED TO IN PARAGRAPH 7 HEREIN AND THAT AT THE TIME OF THE SIGNING OF THE COLLECTIVE AGREEMENT, THE INTERVENER WAS THE BARGAINING AGENT OF ALL OF THE RESPONDENT'S EMPLOYEES IN ONTARIO.

17. IT IS, THEREFORE, APPARENT THAT THE INTERVENER OBTAINED BARGAINING RIGHTS FOR THE EMPLOYEES REFERRED TO IN PARAGRAPH 15 HEREIN, PARTLY AS A RESULT OF CERTIFICATION AND PARTLY AS A RESULT OF VOLUNTARY RECOGNITION. THERE WAS NO EVIDENCE BEFORE THE BOARD THAT THE INTERVENER WAS NOT ENTITLED TO REPRESENT THE EMPLOYEES COVERED BY THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER AT THE TIME THE COLLECTIVE AGREEMENT WAS ENTERED INTO.

18. HAVING REGARD TO THE FOREGOING, THE BOARD FINDS THAT THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER IS A BAR TO THIS APPLICATION FOR CERTIFICATION IN SO FAR AS THE APPLICATION APPLIES TO IRONWORKERS.



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21. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

48-72-PH: CANADIAN UNION OF GENERAL EMPLOYEES (APPLICANT) V. TORONTO WESTERN HOSPITAL, ROY H. BULGIN, BOYD MCAULAY, A. BRUCE MATTHEWS, TREVOR F. MOORE, GRANT HORSEY, A.C. RYLEY, HENRY N. R. JACKMAN, J. E. BRENT, W. C. THORNTON CRAN, JOHN D. MINGAY, W. F. McLEAN, ALAN R. MARCHMENT, FRANCIS D. LACE, FRASER M. FELL, JOHN F. ELLIS, NELSON M. DAVIS, GEORGE M. BLACK, JR, WILLIAM E. COUTTS, D. G. WALDON, J.A. RHIND, HENRY N. BAWDEN, ARTHUR EGGLETON, ALDERMAN, WILLIAM ARCHER, ALDERMAN, DR. LOUIS R. HARNICK, DR. J. MICHAEL CAMPBELL, DR. EVAN MONKMAN (RESPONDENTS).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS P. J. O'KEEFFE AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: G. MILLER AND W. G. CHARLTON FOR THE APPLICANT; R. B. POTTER AND D. S. AFFLECK FOR THE RESPONDENTS.

DECISION OF VICE-CHAIRMAN FRANK V. BOSCARIOL AND BOARD MEMBER P. J. O'KEEFFE:  
JUNE 1, 1973.

1. THIS IS AN APPLICATION FOR CONSENT TO INSTITUTE A PROSECUTION AGAINST THE RESPONDENTS FOR THE ALLEGED VIOLATION OF SECTION 10 OF THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT.

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3. HAVING CAREFULLY REVIEWED THE TOTALITY OF THE EVIDENCE AS ADDUCED AND TAKING INTO ACCOUNT THE SUBMISSIONS OF THE PARTIES THERETO, THE BOARD CONSENTS TO THE INSTITUTION OF A PROSECUTION AGAINST THE NAMED RESPONDENTS FOR THE FOLLOWING OFFENCE ALLEGED TO HAVE BEEN COMMITTED: THAT THE RESPONDENT, TORONTO WESTERN HOSPITAL AND THE INDIVIDUAL RESPONDENTS (SUBJECT TO THOSE INDIVIDUAL RESPONDENTS NAMED IN PARAGRAPH NO. 2 HEREIN) BEING OFFICERS, OFFICIALS OR AGENTS OF THE TORONTO WESTERN HOSPITAL, COMMENCING ON JANUARY 11, 1973, ALTERED THE RATES OF WAGES WITHOUT THE CONSENT OF THE APPLICANT CONTRARY TO SECTION 10 OF THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT, CHAPTER 208, R.S.O. 1970.

4. THE APPROPRIATE DOCUMENTS WILL ISSUE.

DECISION OF BOARD MEMBER J.E.C. ROBINSON, Q.C.: JUNE 1, 1973.

THE WITHIN APPLICATION IS THE LATEST OF A LONG SERIES OF APPLICATIONS MADE BY THE RESPECTIVE PARTIES SINCE THE BOARD INITIALLY FOUND THAT THE EMPLOYEES OF THE RESPONDENT HOSPITAL ON JULY 12TH, 1972, ENGAGED IN AN UNLAWFUL STRIKE.

INTER ALIA, THE BOARD HAS GRANTED TO THE HOSPITAL CONSENT TO

INSTITUTE A PROSECUTION AGAINST THE UNION NEGOTIATING COMMITTEE AND ITS GENERAL PRESIDENT, PATRICK MURPHY, FOR AUTHORIZING THE SAID UNLAWFUL STRIKE.

IN YET ANOTHER DECISION, CANADIAN UNION OF GENERAL EMPLOYEES V TORONTO WESTERN HOSPITAL (1972) OLRB REP. 851 AT P855, THE BOARD RECORDED IN ITS DECISION AS FOLLOWS:

"THE PRESIDENT OF THE APPLICANT TOLD THIS BOARD THAT HE HAD NO INTENTION OF BARGAINING ON BEHALF OF THE EMPLOYEES WHO HAD FAILED TO PARTICIPATE IN THE STRIKE."

THE PRESENT EMPLOYEES OF THE RESPONDENT ARE EMPLOYEES WHO HAD FAILED TO PARTICIPATE IN THE STRIKE, OR TO REMAIN ON STRIKE, TOGETHER WITH CERTAIN OTHER PERSONS WHO HAVE BEEN HIRED SINCE THE UNLAWFUL STRIKE.

HAVING REGARD TO THE STATEMENT RECORDED IN THE PREVIOUS DECISION, (SUPRA), IT IS TRITE TO SAY THAT THE OBTAINING OF CONSENT FROM THE UNION TO THE ALTERATION OF WAGES WOULD BE AN EXERCISE IN FUTILITY, EVEN THOUGH SUCH ATTEMPT WAS MADE BY THE HOSPITAL.

IN ADDITION, IT MUST BE SAID THAT A BOARD OF ARBITRATION HAS BEEN ESTABLISHED UNDER THE PROVISIONS OF THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT WHICH WILL ULTIMATELY DETERMINE THE WAGES TO BE PAID TO THE EMPLOYEES HERE CONCERNED.

HAVING REGARD TO THESE FACTS, AND THE FACT THAT I AM OF THE OPINION THAT THE PRESENT EMPLOYEES ARE BEING USED AS PAWNS IN THE SEEMINGLY ENDLESS WAR BETWEEN THE UNION AND THE HOSPITAL, I WOULD FIND THAT THE GRANTING OF CONSENT IN THIS INSTANCE WOULD DO NOTHING TO CONTRIBUTE TO THE RESTORATION OF A PROPER RELATIONSHIP BETWEEN THE PARTIES.

ACCORDINGLY, IN THE EXERCISE OF MY DISCRETION, I DECLINE TO GIVE THE APPLICANT CONSENT TO PROSECUTE EVEN IF A PRIMA FACIE CASE OR ARGUABLE POINT OF LAW HAS IN FACT BEEN ESTABLISHED.

I WOULD ACCORDINGLY, DISMISS THE APPLICATION.

3589-73-R: CSAO NATIONAL (INC.) (APPLICANT) V. ST. JOSEPH HOSPITAL OF SUDBURY (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS P. J. O'KEEFE AND J.E.C. ROBINSON, Q.C.

DECISION OF THE BOARD: JUNE 5, 1973.

1. BY A DECISION OF THE BOARD DATED MAY 8, 1973, THE PARTIES AGREED TO THE BARGAINING UNIT FOUND TO BE APPROPRIATE IN PARAGRAPH 3, WITH THE

EXCEPTION AS TO WHETHER MEDICAL TECHNOLOGISTS AND TECHNICIANS IN THE EMPLOY OF THE RESPONDENT WHO BELONG TO A RELIGIOUS ORDER, IN THIS CASE THE SISTERS OF CHARITY, SHOULD BE INCLUDED IN THE BARGAINING UNIT. THE APPLICANT SUBMITTED THAT MEMBERS OF THE RELIGIOUS ORDER SHOULD BE INCLUDED IN THE UNIT AND THE RESPONDENT TOOK THE OPPOSITE POSITION.

2. BY LETTER DATED MAY 24, COUNSEL FOR THE APPLICANT, PURSUANT TO THE STATUTORY POWERS PROCEDURE ACT, REQUESTED THAT THE BOARD GIVE REASONS FOR DECIDING THAT THE APPROPRIATE UNIT ENCOMPASSED ONLY "LAY" MEDICAL TECHNOLOGISTS AND TECHNICIANS.

3. BOTH THE "LAY" MEDICAL TECHNOLOGISTS AND TECHNICIANS AND ANY PERSONS IN THOSE CLASSIFICATIONS WHO BELONG TO THE RELIGIOUS ORDER PERFORM THE SAME JOB FUNCTIONS, WORK UNDER THE SAME CONDITIONS, AND THE SAME WAGES ARE PAID FOR THEIR SERVICES. THE WAGES EARNED BY THE "LAY" EMPLOYEES, HOWEVER, ARE PAID DIRECTLY TO THEM FOR THEIR OWN PERSONAL USE, WHEREAS THE WAGES FOR MEMBERS OF THE RELIGIOUS ORDER, BECAUSE OF THEIR VOW OF POVERTY, ARE PAID DIRECTLY TO THE RELIGIOUS ORDER. AS A RESULT THE MEMBERS OF THE RELIGIOUS ORDER OBVIOUSLY DO NOT HAVE THE SAME INTEREST IN THE ECONOMIC REWARDS OF THEIR JOB AS DO THE "LAY" EMPLOYEES. ALSO, THE MEMBERS OF THE RELIGIOUS ORDER ARE BOUND BY VOWS OF ALLEGIANCE AND OBEDIENCE TO THEIR ORDER. IN OUR VIEW, BECAUSE OF THE MEMBERS' PARAMOUNT DUTY AND OBLIGATION TO THEIR ORDER, THERE IS A REAL POTENTIAL FOR A GENUINE CONFLICT OF INTERESTS IF THE MEMBERS OF THE RELIGIOUS ORDER WERE INCLUDED IN THE BARGAINING UNIT WITH THE "LAY" EMPLOYEES. FOR THESE REASONS THE BOARD EXCLUDED THE MEDICAL TECHNOLOGISTS OR TECHNICIANS WHO ARE MEMBERS OF THE SISTERS OF CHARITY FROM THE BARGAINING UNIT IN THE INSTANT CASE. WE WOULD MENTION THAT THE POSITION OF THE BOARD IN THIS MATTER, IN ESSENCE, IS THE SAME AS THAT TAKEN BY THE NATIONAL LABOUR RELATIONS BOARD (SEE SETON HILL COLLEGE CASE, 6-RC-6217; 201 NLRB No. 155).

3245-72-R: CANADIAN URETHANE SOLES EMPLOYEES' ASSOCIATION (APPLICANT) V. CANADIAN URETHANE SOLES LIMITED (RESPONDENT) V. UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL CIO CLC (INTERVENER) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND O. HODGES.

APPEARANCES AT THE HEARING: NO ONE FOR THE APPLICANT; DAVID SHYE FOR THE RESPONDENT; HAROLD F. CALEY AND LORNE ROSENCRAT FOR THE INTERVENER; JEANNETTE M. A. THURSTON FOR THE OBJECTORS.

DECISION OF THE BOARD: JUNE 5, 1973.

1. BY A DECISION DATED MARCH 1, 1973, THE BOARD DIRECTED THE TAKING OF A REPRESENTATION VOTE AMONG THE EMPLOYEES IN THE BARGAINING UNIT FOUND TO BE APPROPRIATE IN PARAGRAPH 1 OF ITS DECISION. VOTERS WERE ASKED TO INDICATE WHETHER OR NOT THEY WISHED TO BE REPRESENTED BY THE INTERVENER IN THEIR EMPLOYMENT RELATIONS WITH THE RESPONDENT.



2. THE REPRESENTATION VOTE WAS TAKEN ON APRIL 3, 1973. IN THE VOTE 89 PERSONS CAST BALLOTS. THREE OF THE BALLOTS WERE SEGREGATED AND NOT COUNTED AS A RESULT OF CHALLENGES MADE AS TO THE ENTITLEMENT OF PERSONS TO PARTICIPATE IN THE VOTE. TWO BALLOTS WERE SPOILED. OF THE REMAINING BALLOTS CAST, 45 WERE MARKED IN FAVOUR OF THE INTERVENER AND 39 WERE MARKED AGAINST THE INTERVENER. IN OTHER WORDS, REGARDLESS OF THE SEGREGATED BALLOTS, MORE THAN 50 PER CENT OF THE BALLOTS OF THOSE WHO VOTED WERE CAST IN FAVOUR OF THE INTERVENER TRADE UNION.

3. A COPY OF THE NOTICE OF THE REPORT OF THE RETURNING OFFICER (FORM 43) WAS PROVIDED TO THE RESPONDENT AND THE INTERVENER AND A COPY, ADDRESSED TO THE EMPLOYEES OF THE RESPONDENT, WAS POSTED ON THE PREMISES OF THE RESPONDENT. BY THE NOTICE, THE RESPONDENT, THE INTERVENER AND THE EMPLOYEES WERE ADVISED OF THEIR ENTITLEMENT TO MAKE REPRESENTATIONS AS TO ANY MATTER RELATING TO THE REPRESENTATION VOTE. THE NOTICE PROVIDED, HOWEVER, THAT ANY REPRESENTATIONS HAD TO BE SUBMITTED IN WRITING AND BE RECEIVED BY THE BOARD NOT LATER THAN APRIL 10, 1973 OR SENT TO THE BOARD BY REGISTERED MAIL AS OF THAT DATE.

4. BY LETTER DATED APRIL 6, 1973, WHICH WAS RECEIVED BY THE BOARD ON APRIL 9, 1973, COUNSEL FOR THE RESPONDENT MADE CERTAIN ALLEGATIONS AND REPRESENTATIONS WITH RESPECT TO THE REPRESENTATION VOTE. AN UNDATED HANDWRITTEN STATEMENT SIGNED BY TWO PERSONS PURPORTING TO BE EMPLOYEES OF THE RESPONDENT ALSO MAKING CERTAIN REPRESENTATIONS WITH REGARD TO THE REPRESENTATION VOTE WAS SENT TO THE BOARD BY REGISTERED LETTER DATED APRIL 11, 1973, A DAY AFTER THE DATE SPECIFIED IN THE NOTICE OF THE REPORT OF THE RETURNING OFFICER.

5. THE BOARD LISTED THIS MATTER FOR CONTINUATION OF HEARING FOR THE PURPOSE OF ENTERTAINING THE ALLEGATIONS AND REPRESENTATIONS CONTAINED IN THE LETTER OF COUNSEL FOR THE RESPONDENT DATED APRIL 6, 1973. AT THE SAID HEARING ON JUNE 4, 1973. COUNSEL FOR THE RESPONDENT ADVISED THE BOARD THAT HE HAD NO EVIDENCE TO CALL IN SUPPORT OF HIS ALLEGATIONS AND THEREFORE WITHDREW THEM.

6. JEANNETTE M.A. THURSTON, WHO IS AN EMPLOYEE OF THE RESPONDENT AND WHO WAS ONE OF THE TWO PERSONS WHO SIGNED THE UNDATED HANDWRITTEN STATEMENT SENT TO THE BOARD BY REGISTERED MAIL ON APRIL 11, 1973, APPEARED AT THE HEARING ON JUNE 4, 1973. UNDER QUESTIONING BY THE BOARD, MRS. THURSTON STATED THAT SHE HAD SEEN THE NOTICE OF THE REPORT OF THE RETURNING OFFICER ADDRESSED TO THE EMPLOYEES AND WAS AWARE THAT THE LAST DAY FOR THE MAKING OF WRITTEN REPRESENTATIONS WITH REGARD TO THE REPRESENTATION VOTE WAS APRIL 10, 1973. MRS. THURSTON OFFERED NO EXPLANATION NOR DID SHE SUBMIT THAT THERE WERE ANY EXTENUATING CIRCUMSTANCES THAT PREVENTED HER FROM FILING HER REPRESENTATIONS WITHIN THE PERIOD REQUIRED BY THE NOTICE. HAVING REGARD TO THE FOREGOING, THE BOARD RULED AT THE HEARING THAT THE WRITTEN REPRESENTATIONS FILED BY MRS. THURSTON WERE UNTIMELY AND THAT SINCE THERE WERE NO EXTENUATING CIRCUMSTANCES ADVANCED AS TO THE REASON FOR THE LATE FILING, THE BOARD WAS NOT PREPARED TO ENTERTAIN EVIDENCE OR SUBMISSIONS IN SUPPORT OF THE REPRESENTATIONS CONTAINED IN HER STATEMENT.

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8. A CERTIFICATE WILL ISSUE TO THE INTERVENER WITH RESPECT TO THE BARGAINING UNIT DESCRIBED IN PARAGRAPH 1 OF THE BOARD'S DECISION OF MARCH 1, 1973.

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3079-72-R: LOCAL UNION 2345 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS A.F.L.-C.I.O.-C.L.C. (APPLICANT) v. THE REGIONAL MUNICIPALITY OF WATERLOO AND THE CORPORATION OF THE CITY OF CAMBRIDGE (RESPONDENTS) v. CANADIAN UNION OF PUBLIC EMPLOYEES (INTERVENER #1) v. CANADIAN UNION OF PUBLIC EMPLOYEES AND ITS LOCAL 32 (INTERVENER #2).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: RICHARD L. EVANS, KEN J. WOODS AND J. KING FOR THE APPLICANT; E. L. MOORE AND L. N. LEWIS FOR THE RESPONDENT THE REGIONAL MUNICIPALITY OF WATERLOO; JOHN COSMAN AND DONALD ATTRIDGE FOR THE RESPONDENT THE CORPORATION OF THE CITY OF CAMBRIDGE; S. R. HENNESSY AND W. F. BROWN FOR INTERVENERS #1 AND #2.

DECISION OF THE BOARD: JUNE 5, 1973.

1. THIS IS AN APPLICATION MADE UNDER SECTION 55 OF THE LABOUR RELATIONS ACT IN WHICH THERE ARE TWO SEPARATE MUNICIPAL ENTITIES NAMED AS RESPONDENTS. SINCE DIFFERENT BARGAINING UNITS AND TRADE UNIONS ARE INVOLVED WITH RESPECT TO EACH OF THE RESPONDENTS, WE HAVE DEALT WITH THE APPLICATION IN TWO PARTS, FIRST AS IT RELATES TO THE REGIONAL MUNICIPALITY OF WATERLOO AND SECOND AS IT RELATES TO THE CORPORATION OF THE CITY OF CAMBRIDGE.

2. THE REGIONAL MUNICIPALITY OF WATERLOO WAS CREATED BY THE REGIONAL MUNICIPALITY OF WATERLOO ACT STATUTES OF ONTARIO 1972 c. 105. BY THAT ACT THE COUNTY OF WATERLOO WAS DISSOLVED AND THE REGIONAL MUNICIPALITY OF WATERLOO STEPPED INTO ITS PLACE ON JANUARY 1, 1973 AND BECAME THE EMPLOYER OF THE FORMER EMPLOYEES OF THE COUNTY. BY THE SAID ACT, AS OF JANUARY 1, 1973 THE THEN EXISTING FIFTEEN LOCAL MUNICIPALITIES IN THE COUNTY OF WATERLOO WERE REDUCED TO SEVEN AREA MUNICIPALITIES. FURTHER, THE PUBLIC UTILITIES COMMISSIONS ATTACHED TO THE AREA MUNICIPALITIES REMAINED IN EXISTENCE SOLELY FOR THE PROVISION OF HYDRO SERVICES. THAT IS TO SAY THE SAID COMMISSIONS ONLY MAINTAINED ELECTRICAL WORKERS IN THEIR EMPLOY. THE ACT, HOWEVER, OBLIGED THE REGIONAL MUNICIPALITY OF WATERLOO TO OFFER EMPLOYMENT TO THE REMAINING UTILITIES EMPLOYEES OF THE COMMISSIONS, THAT IS, THE WATER SUPPLY, WASTE DISPOSAL AND SEWAGE EMPLOYEES IN THE REGION.

3. THE REGIONAL COUNCIL OF THE NEW REGIONAL MUNICIPALITY OF WATERLOO HAS ESTABLISHED AN ORGANIZATIONAL STRUCTURE COMPOSED OF SIX DEPARTMENTS,

EACH HEADED BY A COMMISSIONER, WHO IN TURN REPORTS TO THE CHIEF ADMINISTRATIVE OFFICER. ONE OF THE SIX DEPARTMENTS IS THE DEPARTMENT OF PUBLIC WORKS, WHICH IS DIVIDED INTO THREE DIVISIONS, AND MORE PARTICULARLY THE ROADS DIVISION, THE WASTE DIVISION AND THE WATER SUPPLY DIVISION. THE ROADS DIVISION HAS THIRTY OUTSIDE EMPLOYEES, ALL OF WHOM ARE FORMERLY EMPLOYEES OF THE COUNTY OF WATERLOO AND DO NOT APPEAR TO HAVE BEEN REPRESENTED BY ANY TRADE UNION. THE WASTE DIVISION HAS TWELVE OUTSIDE EMPLOYEES, NINE OF WHOM PRIOR TO JANUARY 1, 1973 WERE EMPLOYEES OF THE FORMER CORPORATION OF THE CITY OF KITCHENER FOR WHOM CUPE LOCAL 68 HOLDS THE BARGAINING RIGHTS. THE WASTE DIVISION IS ALSO RESPONSIBLE FOR THE POLLUTION CONTROL LABORATORY WHICH HAS THREE FULL-TIME EMPLOYEES WHO WERE FORMERLY EMPLOYEES OF THE CITY OF KITCHENER.

4. THE WATER SUPPLY DIVISION HAS TWELVE OUTSIDE EMPLOYEES, SEVEN OF WHOM WERE FORMERLY EMPLOYEES OF THE KITCHENER WATER COMMISSION. CUPE ACQUIRED BARGAINING RIGHTS FOR THESE EMPLOYEES BY CERTIFICATION IN AUGUST OF 1972 AND ASSIGNED THOSE RIGHTS TO ITS LOCAL 68. NO COLLECTIVE AGREEMENT, HOWEVER, WAS EVER ENTERED INTO COVERING THE EMPLOYEES CONCERNED. OF THE REMAINING FIVE EMPLOYEES IN THE WATER SUPPLY DIVISION, TWO WERE FORMERLY EMPLOYEES OF THE WATERLOO PUBLIC UTILITIES COMMISSION, WHO ARE ALSO REPRESENTED BY CUPE LOCAL 68, AND ONE WAS FORMERLY AN EMPLOYEE OF THE PRESTON PUBLIC UTILITIES COMMISSION, REPRESENTED BY CUPE LOCAL 32. THE OTHER TWO EMPLOYEES OF THE WATER SUPPLY DIVISION ARE FORMER EMPLOYEES OF THE GALT PUBLIC UTILITIES COMMISSION AND ARE REPRESENTED BY THE APPLICANT IBEW LOCAL 2345. THE GALT PUBLIC UTILITIES COMMISSION WAS A PARTY TO A COLLECTIVE AGREEMENT WITH IBEW LOCAL 804. PURSUANT TO AN APPLICATION TO THIS BOARD IN AUGUST OF 1972, HOWEVER, LOCAL 2345 WAS DECLARED TO BE THE SUCCESSOR TO LOCAL 804.

5. THE CREATION OF THE REGIONAL MUNICIPALITY OF WATERLOO ON JANUARY 1, 1973 WAS THE RESULT OF THE AMALGAMATION OF MUNICIPALITIES WITHIN THE MEANING OF SUBSECTION (11) OF SECTION 55. BY SUBSECTION (11) THE EMPLOYEES OF THE MUNICIPALITIES CONCERNED ARE DEEMED TO HAVE BEEN INTERMINGLED AND, IN FACT, HAVE BEEN INTERMINGLED. SUBSECTION (11) FURTHER PROVIDES THAT THE BOARD MAY EXERCISE THE LIKE POWERS AS IT HAS UNDER SUBSECTIONS (6) AND (8) OF SECTION 55 WITH RESPECT TO THE SALE OF A BUSINESS. BY SUBSECTION (6) THE BOARD INTER ALIA MAY DETERMINE WHETHER THE EMPLOYEES CONCERNED CONSTITUTE ONE OR MORE APPROPRIATE BARGAINING UNITS, DECLARE WHICH TRADE UNION OR UNIONS, IF ANY, SHALL BE THE BARGAINING AGENT FOR THE EMPLOYEES IN SUCH UNIT OR UNITS, AND AMEND TO SUCH EXTENT AS THE BOARD CONSIDERS NECESSARY ANY CERTIFICATE ISSUED TO ANY TRADE UNION OR ANY BARGAINING UNIT DEFINED IN ANY COLLECTIVE AGREEMENT. BY SUBSECTION (8), BEFORE DISPOSING OF AN APPLICATION UNDER SECTION 55, THE BOARD INTER ALIA MAY HOLD SUCH REPRESENTATION VOTES AS IT CONSIDERS APPROPRIATE.

6. IN EXERCISING THE AUTHORITY AND DISCRETION GRANTED TO THE BOARD UNDER SECTION 55 AND IN PARTICULAR IN DETERMINING THE APPROPRIATE BARGAINING UNIT OR UNITS AND DECLARING WHICH TRADE UNION OR UNIONS, IF ANY, SHALL BE THE BARGAINING AGENT OR AGENTS FOR THE EMPLOYEES IN THE UNIT OR UNITS CONCERNED, THE BOARD MUST CONSIDER NOT ONLY WHAT WOULD BE AN APPRO-



APPROPRIATE UNIT IN A CERTIFICATION APPLICATION BUT ALSO MUST TAKE INTO ACCOUNT AND IN LARGE MEASURE BE GOVERNED BY THE SCOPE OF EXISTING BARGAINING UNITS. ON THE OTHER HAND, ANY UNIT OR UNITS MUST BE APPROPRIATE WITHIN THE ORGANIZATIONAL STRUCTURE OF THE NEW EMPLOYER, WHICH FOR PURPOSES OF THIS PART OF OUR DECISION IS THE REGIONAL MUNICIPALITY OF WATERLOO (SEE THE CORPORATION OF THE CITY OF KITCHENER CASE, BOARD FILE NO. 3061-72-R).

7. HAVING TAKEN INTO ACCOUNT THE ABOVE CONSIDERATIONS, THE BOARD DETERMINES THAT ALL EMPLOYEES OF THE REGIONAL MUNICIPALITY OF WATERLOO IN ITS PUBLIC WORKS DEPARTMENT, SAVE AND EXCEPT FOREMEN AND CHIEF OPERATORS, PERSONS ABOVE THE RANK OF FOREMAN AND CHIEF OPERATOR, OFFICE, CLERICAL AND LABORATORY STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE REGIONAL MUNICIPALITY OF WATERLOO APPROPRIATE FOR COLLECTIVE BARGAINING.

8. THERE ARE APPROXIMATELY FIFTY-FIVE EMPLOYEES IN THE ABOVE DESCRIBED UNIT. OF THAT NUMBER AT LEAST THIRTY OR APPROXIMATELY THIRTY-FIVE PER CENT DO NOT APPEAR TO BE REPRESENTED BY ANY TRADE UNION. CUPE LOCAL 68, HOWEVER, REPRESENTS SOME FOURTEEN EMPLOYEES OR APPROXIMATELY TWENTY-FIVE PER CENT OF THE EMPLOYEES IN THE UNIT. IN THESE CIRCUMSTANCES, THE BOARD IS OF THE OPINION THAT A REPRESENTATION VOTE SHOULD BE DIRECTED TO DETERMINE WHETHER OR NOT THE EMPLOYEES IN THE BARGAINING UNIT WISH TO BE REPRESENTED BY A TRADE UNION. SINCE THE APPLICANT IBEW LOCAL 2345 AND CUPE LOCAL 32 EACH ONLY REPRESENTS TWO EMPLOYEES, OR LITTLE MORE THAN THREE AND ONE-HALF PER CENT OF THE EMPLOYEES IN THE UNIT, WE ARE OF THE OPINION THAT NEITHER THE APPLICANT NOR CUPE LOCAL 32 HAS ESTABLISHED AN ENTITLEMENT TO BE ON THE BALLOT (SEE ALLIANCE DAIRY LIMITED CASE, OLRB M.R. AUGUST 1966 P. 337, AND WESTEEL-ROSCO LIMITED CASE, OLRB M.R. DECEMBER 1966 P. 718).

9. THE BOARD ACCORDINGLY DIRECTS THE TAKING OF A REPRESENTATION VOTE IN THE BARGAINING UNIT DETERMINED IN PARAGRAPH 7. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BE REPRESENTED BY THE CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL 68.

10. ALL EMPLOYEES OF THE REGIONAL MUNICIPALITY OF WATERLOO IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

11. WE WOULD DEAL NOW WITH THE RESPONDENT THE CORPORATION OF THE CITY OF CAMBRIDGE. BY THE REGIONAL MUNICIPALITY OF WATERLOO ACT (SUPRA) THE CITY OF GALT AND THE TOWNS OF PRESTON AND HESPELER WERE AMALGAMATED INTO A CITY MUNICIPALITY NOW BEARING THE NAME OF THE CORPORATION OF THE CITY OF CAMBRIDGE. THE PUBLIC WORKS DEPARTMENT IS ONE OF THREE DEPARTMENTS UNDER THE CONTROL OF THE CITY'S CHIEF ENGINEER, THE OTHER TWO DEPARTMENTS BEING ROADS AND CONSTRUCTION. THERE ARE A TOTAL OF 125 EMPLOYEES IN ALL THREE DEPARTMENTS. THE PUBLIC UTILITIES COMMISSION OF THE CITY OF GALT EMPLOYED ELEVEN WATER WORKERS AND THIRTY-FIVE ELECTRICAL WORKERS, ALL OF WHOM ARE REPRESENTED BY THE APPLICANT IBEW LOCAL 2345. AS OF JANUARY 1, 1973, OUT OF THE ELEVEN WATER WORKERS, NINE BECAME EMPLOYEES OF THE PUBLIC

WORKS DEPARTMENT OF THE CORPORATION OF THE CITY OF CAMBRIDGE AND THE REMAINING TWO BECAME EMPLOYEES OF THE PUBLIC WORKS DEPARTMENT OF THE RESPONDENT THE REGIONAL MUNICIPALITY OF WATERLOO. WE HAVE DEALT WITH THE LATTER TWO EMPLOYEES IN THE FIRST PART OF THIS DECISION. IT IS THE OTHER NINE WHO BECAME EMPLOYEES OF THE PUBLIC WORKS DEPARTMENT OF THE CORPORATION OF THE CITY OF CAMBRIDGE WHO WE ARE CONCERNED WITH IN THIS PART OF OUR DECISION.

12. THE PUBLIC WORKS DEPARTMENT OF THE RESPONDENT THE CORPORATION OF THE CITY OF CAMBRIDGE IS COMPOSED OF A TOTAL OF THIRTY-THREE OUTSIDE EMPLOYEES OF WHOM NINE WERE FORMERLY EMPLOYEES OF THE GALT PUBLIC UTILITIES COMMISSION REPRESENTED BY THE APPLICANT IBEW LOCAL 2345. SOME SIXTEEN OF THE EMPLOYEES OF THE DEPARTMENT WERE EMPLOYEES OF THE FORMER CITY OF GALT AND WERE REPRESENTED BY CUPE LOCAL 579. THREE EMPLOYEES WERE FORMERLY EMPLOYEES OF THE TOWN OF HESPELER AND WERE ALSO REPRESENTED BY CUPE LOCAL 579. THE REMAINING FIVE EMPLOYEES WERE EMPLOYEES OF THE FORMER TOWN OF PRESTON AND WERE REPRESENTED BY CUPE LOCAL 32.

13. EVIDENCE WAS ADDUCED AT THE ORIGINAL HEARING OF THE APPLICATION THAT SATISFIES THE BOARD THAT CUPE LOCAL 32 AND CUPE LOCAL 579 MERGED INTO A NEWLY CREATED LOCAL NOW KNOWN AS CUPE LOCAL 32 AND THE FORMER TWO LOCALS AS OF THE MERGER CEASED TO EXIST. ACCORDINGLY, PURSUANT TO SECTION 54 OF THE ACT, THE BOARD DECLARES THAT THE INTERVENER CUPE LOCAL 32, BY REASON OF A MERGER, IS THE SUCCESSOR TO CUPE LOCAL 579 AND THE FORMER CUPE LOCAL 32 AND THAT THE NEW CUPE LOCAL 32 HAS ACQUIRED THE RIGHTS, PRIVILEGES AND DUTIES UNDER THIS ACT OF ITS PREDECESSORS.

14. THE ESTABLISHMENT OF THE CORPORATION OF THE CITY OF CAMBRIDGE CLEARLY WAS AN AMALGAMATION OF MUNICIPALITIES WITHIN THE MEANING OF SUBSECTION (11) OF SECTION 55. AS WAS STATED EARLIER IN THIS DECISION, THE BOARD, BY VIRTUE OF SECTION 55, HAS THE AUTHORITY TO DETERMINE A BARGAINING UNIT OR UNITS AND DECLARE WHAT TRADE UNION OR UNIONS SHALL BE THE BARGAINING AGENT FOR THE EMPLOYEES IN THE UNIT OR UNITS DETERMINED. AS STATED EARLIER ALSO, IN EXERCISING ITS DISCRETION IN MAKING THE ABOVE DETERMINATIONS AND DECLARATIONS, THE BOARD IN APPLICATIONS UNDER SECTION 55 MUST TAKE INTO ACCOUNT AND IN LARGE MEASURE BE GOVERNED BY EXISTING BARGAINING UNITS BUT AT THE SAME TIME DETERMINE A UNIT OR UNITS WHICH ARE APPROPRIATE UNDER THE ORGANIZATIONAL STRUCTURE OF THE NEW EMPLOYER, WHICH IS THIS PART OF OUR DECISION IN THE CORPORATION OF THE CITY OF CAMBRIDGE.

15. THE PUBLIC WORKS DEPARTMENT OF THE RESPONDENT THE CORPORATION OF THE CITY OF CAMBRIDGE IS RESPONSIBLE FOR THE CITY'S WATER AND SEWER SERVICES AND THE WORK PERFORMED BY THE WATER WORKERS AND SEWER WORKERS IS SIMILAR IN NATURE. AT THE PRESENT TIME THE PUBLIC WORKS DEPARTMENT IS OPERATING OUT OF WORKS YARDS IN THE THREE FORMER MUNICIPALITIES OF GALT, PRESTON AND HESPELER, BUT HAS VACATED THE WORKS YARD OF THE GALT PUBLIC UTILITIES COMMISSION. TO DATE THERE HAS BEEN SOME LIMITED INTERCHANGE OF THE WATER AND SEWER FUNCTIONS AND OF THE NINE FORMER COMMISSION WATER WORKERS, FIVE HAVE BEEN EMPLOYED IN JOBS INVOLVED IN THE SEWER OPERATIONS OF THE CORPORATION OF THE CITY OF CAMBRIDGE. IT IS THE DECLARED



INTENTION OF THE CORPORATION OF THE CITY OF CAMBRIDGE TO TOTALLY INTEGRATE ITS WATER AND SEWER OPERATIONS.

16. HAVING REGARD TO THE FOREGOING AND TAKING INTO ACCOUNT THE CONSIDERATIONS REFERRED TO ABOVE, THE BOARD DETERMINES THAT ALL EMPLOYEES OF THE CORPORATION OF THE CITY OF CAMBRIDGE IN ITS PUBLIC WORKS DEPARTMENT, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND CLERICAL STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE CORPORATION OF THE CITY OF CAMBRIDGE APPROPRIATE FOR COLLECTIVE BARGAINING.

17. OF SOME THIRTY-THREE EMPLOYEES IN THE ABOVE DESCRIBED UNIT, TWENTY-FOUR OR APPROXIMATELY SEVENTY-THREE PER CENT ARE REPRESENTED BY CUPE LOCAL 32 AND NINE EMPLOYEES OR APPROXIMATELY TWENTY-SEVEN PER CENT ARE REPRESENTED BY THE APPLICANT IBEW LOCAL 2345. HAVING REGARD TO THE DEGREE OF REPRESENTATION ENJOYED BY THE TWO TRADE UNIONS, THE BOARD IS OF THE OPINION THAT THE QUESTION AS TO WHICH TRADE UNION SHOULD REPRESENT THE EMPLOYEES IN THE UNIT CAN BEST BE RESOLVED BY THE TAKING OF A REPRESENTATION VOTE (SEE THE ESSEX COUNTY BOARD OF EDUCATION CASE, OLRB M.R. JULY 1969 P. 552).

18. THE BOARD ACCORDINGLY DIRECTS THE TAKING OF A REPRESENTATION VOTE IN THE BARGAINING UNIT DETERMINED IN PARAGRAPH 16. VOTERS WILL BE GIVEN A CHOICE BETWEEN THE INTERVENER CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL 32 AND THE APPLICANT INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL 2345.

19. ALL EMPLOYEES OF THE RESPONDENT THE CORPORATION OF THE CITY OF CAMBRIDGE IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

20. THE MATTER IS REFERRED TO THE REGISTRAR.

3061-72-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION 1187 (APPLICANT) V. THE CORPORATION OF THE CITY OF KITCHENER (RESPONDENT) V. CANADIAN UNION OF PUBLIC EMPLOYEES AND ITS LOCAL 68 (INTERVENER #1) V. THE CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS LOCAL 304 (INTERVENER #2).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: RICHARD L. EVANS, KEN WOODS AND C. DAVIS FOR THE APPLICANT; JOHN P. SANDERSON, R. BALDWIN AND F. KOURIG FOR THE RESPONDENT; MARIO HIKL AND WILLIAM BROWN FOR INTERVENER #1; B. A. DUNN, MURRAY ALLEN AND T. JOHNSTON FOR INTERVENER #2.



## DECISION OF THE BOARD:

JUNE 5, 1973.

1. THIS IS AN APPLICATION MADE UNDER SECTION 55 OF THE LABOUR RELATIONS ACT.
2. BY THE REGIONAL MUNICIPALITY OF WATERLOO ACT, STATUTES OF ONTARIO 1972 c. 105, THE CITY OF KITCHENER, THE VILLAGE OF BRIDGEPORT, PORTIONS OF THE CITY OF WATERLOO AND PORTIONS OF THE COUNTY OF WATERLOO WERE AMALGAMATED INTO A CITY MUNICIPALITY BEARING THE NAME OF THE CORPORATION OF THE CITY OF KITCHENER, THE RESPONDENT IN THIS APPLICATION. AS A RESULT OF THE AMALGAMATION, WHICH CAME INTO EFFECT ON JANUARY 1, 1973, THE RESPONDENT HAS ESTABLISHED A NEW ORGANIZATIONAL STRUCTURE.
3. UNDER THE NEW STRUCTURE, A NEW DEPARTMENT OF PUBLIC WORKS, EMPLOYING APPROXIMATELY 350 PERSONS, HAS BEEN SET UP WHICH IS COMPOSED OF FOUR DIVISIONS RESPONSIBLE TO THE COMMISSIONER OF WORKS. THE OPERATIONS DIVISION IS RESPONSIBLE FOR THE CONSTRUCTION AND MAINTENANCE OF DISTRICT ROADS AND SERVICES THROUGHOUT THE CITY AND EMPLOYS SOME 150 PERSONS WHO WERE COVERED BY A COLLECTIVE AGREEMENT BETWEEN CUPE LOCAL 68 AND THE FORMER CORPORATION OF THE CITY OF KITCHENER (WORKS DEPARTMENT) PRIOR TO THE AMALGAMATION ON JANUARY 1, 1973. THE ENGINEERING DIVISION CARRIES OUT THE ADMINISTRATIVE AND TECHNICAL ENGINEERING SERVICES FOR THE CITY. THE OFFICE AND CLERICAL STAFF OF THIS DIVISION, INCLUDING DRAFTSMEN, PRIOR TO JANUARY 1, 1973, WERE COVERED BY A COLLECTIVE AGREEMENT BETWEEN CUPE LOCAL 791 AND THE FORMER CORPORATION OF THE CITY OF KITCHENER. IT IS, HOWEVER, WITH THE REMAINING TWO DIVISIONS OF THE DEPARTMENT OF PUBLIC WORKS, NAMELY THE UTILITIES DIVISION AND THE TRAFFIC SERVICES DIVISION, WITH WHICH WE ARE PRIMARILY CONCERNED IN THIS APPLICATION.
4. THE UTILITIES DIVISION IS DIVIDED INTO TWO UNITS, ONE PROVIDING GAS SERVICES AND THE OTHER PROVIDING WATER SERVICES. THERE ARE SOME 25 SERVICE EMPLOYEES ATTACHED TO THE WATER UNIT AND SOME 35 SERVICE EMPLOYEES ATTACHED TO THE GAS UNIT. THE EMPLOYEES IN BOTH UNITS OR SECTIONS PERFORM CONSTRUCTION, MAINTENANCE AND SERVICE FUNCTIONS IN THEIR RESPECTIVE UNITS, I.E. WATER AND GAS. THE 25 SERVICE EMPLOYEES IN THE WATER UNIT WERE FORMERLY EMPLOYEES OF THE KITCHENER WATER COMMISSION, WHICH CEASED TO EXIST AS OF JANUARY 1, 1973. IN OCTOBER OF 1972, CUPE ACQUIRED THE BARGAINING RIGHTS FOR THESE EMPLOYEES BY CERTIFICATION AND CUPE ASSIGNED THOSE RIGHTS TO ITS LOCAL 68. NO COLLECTIVE AGREEMENT, HOWEVER, HAS BEEN ENTERED INTO COVERING THE WATER UNIT EMPLOYEES. THE 35 EMPLOYEES OF THE GAS UNIT, ON THE OTHER HAND, UNTIL JANUARY 1, 1973, WERE EMPLOYEES OF THE KITCHENER PUBLIC UTILITIES COMMISSION. THE APPLICANT IBEW LOCAL 1187 WAS A PARTY TO A COLLECTIVE AGREEMENT WITH THE SAID COMMISSION COVERING BOTH GAS AND ELECTRICAL SERVICES EMPLOYEES. THE IBEW LOCAL 1187 STILL REPRESENTS THE ELECTRICAL SERVICE EMPLOYEES UNDER ITS COLLECTIVE AGREEMENT AS HYDRO SERVICES REMAIN WITH THE COMMISSION. AT PRESENT THE WATER AND GAS UNITS ARE OPERATING OUT OF SEPARATE BUILDINGS. HOWEVER, CONSTRUCTION IS UNDERWAY TO ENLARGE THE BUILDING HOUSING THE WATER FACILITIES SO THAT BOTH THE WATER AND GAS OPERATIONS CAN BE LOCATED UNDER ONE ROOF.

5. THE TRAFFIC SERVICES DIVISION IS DIVIDED INTO FOUR SECTIONS. THE TRAFFIC COORDINATION SECTION PERFORMS BASICALLY ADMINISTRATIVE FUNCTIONS INVOLVING THE EMPLOYMENT OF OFFICE AND CLERICAL PERSONNEL REPRESENTED BY CUPE LOCAL 791 BY REASON OF ITS COLLECTIVE AGREEMENT WITH THE FORMER CORPORATION OF THE CITY OF KITCHENER. THE SECTION IS ALSO RESPONSIBLE FOR THE SUPERVISION AND CONTROL OF 27 PART-TIME NON-UNION SCHOOL CROSS-WALK GUARDS. THE PARKING SECTION HAS REPLACED THE KITCHENER PARKING AUTHORITY WHICH WENT OUT OF EXISTENCE ON JANUARY 1, 1973. THE 12 EMPLOYEES OF THIS SECTION, WHO WERE FORMERLY EMPLOYEES OF THE PARKING AUTHORITY, ARE NOT REPRESENTED BY A TRADE UNION. THE TRAFFIC MAINTENANCE SECTION IS RESPONSIBLE FOR THE MAINTENANCE AND INSTALLATION OF TRAFFIC SIGNALS, ROADWAY SIGNS AND ROADWAY MARKINGS. THE 12 HOURLY RATED EMPLOYEES IN THIS SECTION ARE REPRESENTED BY CUPE LOCAL 68 UNDER ITS COLLECTIVE AGREEMENT WITH THE FORMER CORPORATION OF THE CITY OF KITCHENER COVERING ITS WORKS DEPARTMENT EMPLOYEES.

6. THE TRANSIT SECTION OF THE TRAFFIC SERVICES DIVISION EMPLOYS 30 BUS AND TROLLEY DRIVERS WHO OPERATE THE BUSES PROVIDING PUBLIC TRANSPORTATION THROUGHOUT KITCHENER AND WATERLOO. THE 30 MECHANICS AND 10 SERVICEMEN WHO LARGELY MAINTAIN AND SERVICE THE BUSES, HOWEVER, ARE IN THE TRANSIT MAINTENANCE SECTION OF THE FLEET DIVISION OF THE DEPARTMENT OF SUPPLY AND SERVICES. ALL 70 EMPLOYEES WERE FORMERLY EMPLOYEES OF THE KITCHENER PUBLIC UTILITIES COMMISSION AND ARE REPRESENTED BY THE INTERVENER CBRT LOCAL 304 BY REASON OF ITS COLLECTIVE AGREEMENT WITH THE SAID COMMISSION. THE MECHANICS AND SERVICEMEN ARE LOCATED IN A GARAGE ON KING STREET EAST IN KITCHENER, WHICH IS ONE OF THE TWO MAIN MAINTENANCE DEPOTS OF THE RESPONDENT. THE OTHER DEPOT CALLED THE CITY YARD, WHICH IS ALSO PART OF THE FLEET DIVISION OF THE DEPARTMENT OF SUPPLY AND SERVICES, IS LOCATED ON BRAMM STREET IN KITCHENER. THERE ARE 16 MECHANICS AND 4 SERVICEMEN AT THIS LOCATION WHO ARE LARGELY RESPONSIBLE FOR THE MAINTENANCE AND SERVICING OF CONSTRUCTION, GAS, WATER AND PARKS AND RECREATION DEPARTMENT VEHICLES AND EQUIPMENT. THE MECHANICS AND SERVICEMEN AT THE CITY YARD ON BRAMM STREET ARE REPRESENTED BY CUPE LOCAL 68 UNDER ITS COLLECTIVE AGREEMENT WITH THE FORMER CORPORATION OF THE CITY OF KITCHENER. TO DATE THERE HAS BEEN A VERY LIMITED DEGREE OF INTERCHANGE OF EMPLOYEES AND JOB FUNCTIONS BETWEEN THE TWO DEPOTS.

7. MOST OF THE FORMER EMPLOYEES OF THE NOW DEFUNCT PARKS AND RECREATION COMMISSION WHO WERE REPRESENTED BY CUPE LOCAL 1093 BY REASON OF A COLLECTIVE AGREEMENT WITH THE SAID COMMISSION, SINCE JANUARY 1, 1973, ARE EMPLOYEES OF THE RESPONDENT'S PARK AND RECREATION DEPARTMENT ALTHOUGH A NUMBER OF THEM ARE EMPLOYED IN THE DEPARTMENT OF SUPPLY AND SERVICES.

8. WE WOULD MENTION HERE THAT CUPE ADDUCED EVIDENCE AT THE HEARING OF THIS APPLICATION WHICH SATISFIED THE BOARD THAT CUPE LOCAL 68, THE PARTY TO THE COLLECTIVE AGREEMENT WITH THE FORMER CORPORATION OF THE CITY OF KITCHENER, AND CUPE LOCAL 1093 MERGED INTO A NEWLY CREATED CUPE LOCAL 68 WHICH REPLACED THE OLD CUPE LOCAL 68 AND CUPE LOCAL 1093, BOTH OF WHICH LOCALS WENT OUT OF EXISTENCE. THE BOARD ACCORDINGLY, PURSUANT TO SECTION

54 OF THE ACT, DECLARES THAT CUPE LOCAL 68, THE RESPONDENT IN THIS APPLICATION, BY REASON OF THE ABOVE REFERRED TO MERGER, IS THE SUCCESSOR TO THE NOW DEFUNCT CUPE LOCAL 68 AND CUPE LOCAL 1093, AND HAS ACQUIRED THE RIGHTS, PRIVILEGES AND DUTIES UNDER THIS ACT OF ITS PREDECESSORS.

9. SUBSECTION (2) OF SECTION 55 PROVIDES INTER ALIA THAT WHERE AN EMPLOYER WHO IS A PARTY TO A COLLECTIVE AGREEMENT WITH A TRADE UNION SELLS HIS BUSINESS, THE PERSON TO WHOM THE BUSINESS HAS BEEN SOLD, UNTIL THE BOARD OTHERWISE DECLARES, IS BOUND BY THE COLLECTIVE AGREEMENT AS IF HE HAD BEEN A PARTY TO THAT AGREEMENT. SUBSECTION (3) OF SECTION 55 PROVIDES INTER ALIA THAT WHERE AN EMPLOYER, ON BEHALF OF WHOSE EMPLOYEES A TRADE UNION HAS BEEN CERTIFIED AS BARGAINING AGENT OR HAS GIVEN OR IS ENTITLED TO GIVE NOTICE TO BARGAIN, SELLS HIS BUSINESS, THE TRADE UNION CONTINUES, UNTIL THE BOARD OTHERWISE DECLARES, TO BE THE BARGAINING AGENT FOR THE EMPLOYEES OF THE PERSON TO WHOM THE BUSINESS WAS SOLD IN THE LIKE BARGAINING UNIT IN THAT BUSINESS.

10. SUBSECTION (11) OF SECTION 55 PROVIDES THAT WHERE TWO OR MORE MUNICIPALITIES ARE AMALGAMATED, THE EMPLOYEES CONCERNED SHALL BE DEEMED TO HAVE BEEN INTERMINGLED AND THE BOARD MAY EXERCISE THE LIKE POWERS WHICH IT MAY EXERCISE UNDER SUBSECTIONS (6) AND (8) OF SECTION 55 WITH RESPECT TO THE SALE OF A BUSINESS. ALSO BY SUBSECTION (11) THE NEW MUNICIPALITY HAS THE LIKE RIGHTS AND OBLIGATIONS AS THE PERSON TO WHOM THE BUSINESS IS SOLD UNDER SECTION 55 AND WHO INTERMINGLES THE EMPLOYEES OF ONE OF HIS BUSINESSES WITH THOSE OF ANOTHER OF HIS BUSINESSES. SIMILARLY, ANY TRADE UNION CONCERNED HAS THE LIKE RIGHTS AND OBLIGATIONS AS IT WOULD HAVE IN THE CASE OF THE INTERMINGLING OF EMPLOYEES OF TWO OR MORE BUSINESSES. SUBSECTION (6) PROVIDES THAT NOTWITHSTANDING SUBSECTIONS (2) AND (3) WHERE A BUSINESS WAS SOLD TO A PERSON WHO CARRIES ON ONE OR MORE OTHER BUSINESSES AND A TRADE UNION IS THE BARGAINING AGENT OF THE EMPLOYEES OF ANY OF THE BUSINESSES AND SUCH PERSON INTERMINGLES THE EMPLOYEES OF ONE BUSINESS WITH THOSE OF ANOTHER OF THE BUSINESSES, THE BOARD MAY, UPON THE APPLICATION OF ANY OF THE PERSONS CONCERNED, DECLARE THAT THE PERSONS TO WHOM THE BUSINESS WAS SOLD IS NO LONGER BOUND BY THE COLLECTIVE AGREEMENT REFERRED TO IN SUBSECTION (2), OR DETERMINE WHETHER THE EMPLOYEES CONCERNED CONSTITUTE ONE OR MORE APPROPRIATE BARGAINING UNITS, OR DECLARE WHICH TRADE UNION OR TRADE UNIONS, IF ANY, SHALL BE THE BARGAINING AGENT FOR THE EMPLOYEES IN SUCH UNIT OR UNITS, AND AMEND, TO SUCH EXTENT AS THE BOARD CONSIDERS NECESSARY, ANY CERTIFICATE ISSUED TO ANY TRADE UNION OR ANY BARGAINING UNIT DEFINED IN ANY COLLECTIVE AGREEMENT. BY SUBSECTION (8) BEFORE DISPOSING OF ANY APPLICATION UNDER SECTION 55, THE BOARD INTER ALIA MAY HOLD SUCH REPRESENTATION VOTE AS IT CONSIDERS APPROPRIATE.

11. THERE IS NO DISPUTE THAT THERE HAS BEEN AN AMALGAMATION OF MUNICIPALITIES WITHIN THE MEANING OF SUBSECTION (11) OF SECTION 55 AND THAT THE SUBSECTION IS THEREFORE APPLICABLE IN THE PRESENT CASE. THE QUESTION TO BE DETERMINED THEREFORE IS THE APPROPRIATE BARGAINING UNIT OR UNITS. IN THIS REGARD, IT IS IMPLICIT IN SUBSECTIONS (2) AND (3) OF SECTION 55 THAT THE INTENT OF THE SECTION IS TO PRESERVE THE COLLECTIVE AGREEMENT OR BARGAINING RIGHTS OF A TRADE UNION IN THE EVENT OF A SALE OF A BUSINESS



TO A PERSON WHO BECOMES THE EMPLOYER OF THE EMPLOYEES IN THE BARGAINING UNIT OR UNITS CONCERNED. WHEN INTERMINGLING OF EMPLOYEES IN THE CIRCUMSTANCES OUTLINED ABOVE HAS OCCURRED, THE BOARD IS GIVEN THE DISCRETIONARY AUTHORITY TO AMEND, ALTER OR EVEN TERMINATE COLLECTIVE AGREEMENTS AND BARGAINING RIGHTS OF A TRADE UNION. ALSO, AS HAS BEEN STATED, THE BOARD HAS THE AUTHORITY TO DETERMINE AN APPROPRIATE BARGAINING UNIT OR UNITS AND DECLARE WHICH TRADE UNION OR TRADE UNIONS SHALL BE THE BARGAINING AGENT FOR THE EMPLOYEES IN THE UNIT OR UNITS CONCERNED.

12. THE BOARD HAS NOTED IN EARLIER DECISIONS IN APPLICATIONS UNDER SECTION 55 OR ITS PREDECESSOR SECTION 47A OF THE ACT, DIFFERENT CONSIDERATIONS ARE TAKEN INTO ACCOUNT IN DETERMINING BARGAINING UNITS IN SUCCESSOR APPLICATIONS. MORE PARTICULARLY, THE CONSIDERATIONS WHICH THE BOARD TAKES INTO ACCOUNT IN DETERMINING AN APPROPRIATE BARGAINING UNIT IN A CERTIFICATION APPLICATION MAY BE CIRCUMSCRIBED IN THE CASE OF A SUCCESSOR APPLICATION. THAT IS TO SAY, IN APPLYING SECTION 55, THE BOARD MUST CONSIDER NOT ONLY WHAT WOULD BE AN APPROPRIATE BARGAINING UNIT IN A CERTIFICATION PROCEEDING, BUT ALSO IT MUST TAKE INTO ACCOUNT AND IN LARGE MEASURE BE GOVERNED BY THE SCOPE OF BARGAINING UNITS ALREADY IN EXISTENCE (SEE OSHAWA WHOLESALE LIMITED CASE, OLRB M.R. FEBRUARY 1964 P. 584). HOWEVER, IN APPLYING THE PROVISIONS OF SUBSECTION (6) OF SECTION 55, THE BOARD'S DETERMINATION NONETHELESS MUST BE BASED ON AN APPROPRIATE BARGAINING UNIT OR UNITS (SEE ESSEX COUNTY BOARD OF EDUCATION CASE, OLRB M.R. JULY 1969 P. 552). APPLIED TO THE CIRCUMSTANCES OF THE INSTANT APPLICATION, THE BOARD MUST STRIKE A BALANCE BETWEEN PRESERVING THE BARGAINING RIGHTS HELD BY THE INTERVENING TRADE UNIONS PRIOR TO THE AMALGAMATIONS AND AT THE SAME TIME DETERMINE A BARGAINING UNIT OR UNITS WHICH ARE APPROPRIATE IN THE CONTEXT OF THE STRUCTURAL ORGANIZATION OF THE RESPONDENT.

13. HAVING REGARD TO THE AUTHORITY VESTED IN THE BOARD BY SECTION 55 IN THE INSTANT APPLICATION AND THE FOREGOING CONSIDERATIONS WITH RESPECT TO THE BALANCING OF INTERESTS, WE WOULD FIRST DEAL WITH THE BARGAINING RIGHTS HELD BY THE APPLICANT IBEW Local 1187 AND THE INTERVENER CUPE Local 68. THE FORMER TRADE UNION HOLDS THE BARGAINING RIGHTS FOR THE GAS WORKERS IN THE EMPLOY OF THE RESPONDENT AND CUPE Local 68 HOLDS THE BARGAINING RIGHTS FOR THE WATER WORKERS IN THE EMPLOY OF THE RESPONDENT. BOTH THE GAS AND WATER WORKERS ARE EMPLOYED IN THE UTILITIES DIVISION OF THE RESPONDENT'S DEPARTMENT OF PUBLIC WORKS. WHILE THE TRAINING AND SKILL REQUIRED OF A GAS WORKER IS CONSIDERABLY GREATER THAN THAT REQUIRED OF A WATER WORKER BECAUSE OF THE MORE VOLATILE QUALITY OF GAS AS OPPOSED TO WATER, THE EMPLOYEES OF BOTH UNITS ARE ENGAGED IN THE CONSTRUCTION, MAINTENANCE AND SERVICING OF THE TWO MAJOR UTILITIES PROVIDED BY THE RESPONDENT. FURTHER, TAKEN TOGETHER THE TWO UNITS MAKE UP THE WHOLE OF THE UTILITIES DIVISION. WHILE AT PRESENT THE GAS AND WATER WORKERS ARE HOUSED IN SEPARATE BUILDINGS, IT IS ANTICIPATED THAT BOTH GROUPS WILL BE OCCUPYING THE SAME PREMISES IN THE REASONABLY NEAR FUTURE.

14. IN THESE CIRCUMSTANCES AND HAVING REGARD TO THE FACTORS REFERRED TO ABOVE, THE BOARD DETERMINES THAT ALL GAS AND WATER WORKERS OF THE RESPONDENT EMPLOYED IN ITS UTILITIES DIVISION OF THE DEPARTMENT OF PUBLIC

WORKS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE AND CLERICAL STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

15. HAVING REGARD TO THE DEGREE OF REPRESENTATION ENJOYED BY THE TWO TRADE UNIONS CONCERNED AMONG THE EMPLOYEES IN THE ABOVE DESCRIBED BARGAINING UNIT, THE BOARD FURTHER DIRECTS THAT A REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES IN THE UNIT. VOTERS WILL BE GIVEN A CHOICE BETWEEN THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION 1187 AND THE CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL 68.

16. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

17. WE WOULD DEAL NOW WITH THE BARGAINING RIGHTS HELD BY THE INTERVENER CBRT LOCAL 304 AND THE INTERVENER CUPE LOCAL 68. THE CBRT LOCAL 304 HOLD THE BARGAINING RIGHTS FOR THE BUS AND TROLLEY DRIVERS AND THE MECHANICS AND SERVICEMEN WHO ARE LARGELY ENGAGED IN THE MAINTENANCE AND SERVICING OF TRANSPORTATION VEHICLES OPERATED BY THE DRIVERS. MOREOVER, AT THE PRESENT TIME ALL OF THEM ARE LOCATED OR WORK OUT OF THE SAME DEPOT ON KING STREET EAST IN KITCHENER. CUPE LOCAL 68 HOLDS THE BARGAINING RIGHTS FOR THE MECHANICS AND SERVICEMEN WHO ARE LARGELY ENGAGED IN THE MAINTENANCE AND SERVICING OF THE OTHER VEHICLES AND EQUIPMENT OWNED AND OPERATED BY THE RESPONDENT AND ALL OF THESE EMPLOYEES WORK OUT OF A SEPARATE DEPOT ON BRAMH STREET IN KITCHENER. THE DRIVERS REPRESENTED BY THE CBRT LOCAL 304 ARE EMPLOYED IN THE TRANSIT SECTION OF THE TRAFFIC SERVICE DIVISION OF THE DEPARTMENT OF PUBLIC WORKS. THE MECHANICS AND SERVICEMEN REPRESENTED BY THE CBRT LOCAL 304 ARE EMPLOYED IN THE FLEET DIVISION OF THE DEPARTMENT OF SUPPLY AND SERVICES. THE MECHANICS AND SERVICEMEN REPRESENTED BY CUPE LOCAL 68 ALSO ARE EMPLOYED IN THE FLEET DIVISION OF THE DEPARTMENT OF SUPPLY AND SERVICES. THE NATURE OF THE WORK PERFORMED BY THE MECHANICS AND SERVICEMEN REPRESENTED BY THE TWO TRADE UNIONS, WHILE LARGELY PERFORMED ON DIFFERENT VEHICLES AND EQUIPMENT, IS ESSENTIALLY THE SAME. MOREOVER, WHILE MINIMAL TO DATE, THERE STILL HAS BEEN SOME INTERCHANGE BOTH OF PERSONNEL AND WORK FUNCTIONS BETWEEN THE MAINTENANCE AND SERVICE PERSONNEL OF THE TWO DEPOTS.

18. SINCE THE BUS AND TROLLEY DRIVERS REPRESENTED BY THE CBRT LOCAL 304 UNDER THE NEW ORGANIZATIONAL STRUCTURE OF THE RESPONDENT ARE EMPLOYED IN THE DEPARTMENT OF PUBLIC WORKS WHEREAS THE MECHANICS AND SERVICEMEN ALSO REPRESENTED BY THE CBRT LOCAL 304 AS WELL AS THE MECHANICS AND SERVICEMEN REPRESENTED BY CUPE LOCAL 68 ARE EMPLOYED IN THE RESPONDENT'S DEPARTMENT OF SUPPLY AND SERVICES, WE ARE OF THE OPINION THAT IN THESE CIRCUMSTANCES A UNIT COMPOSED SOLELY OF THE BUS AND TROLLEY DRIVERS IS AN APPROPRIATE UNIT FOR COLLECTIVE BARGAINING.

19. THE BOARD ACCORDINGLY DETERMINES THAT ALL BUS AND TROLLEY COACH OPERATORS IN THE EMPLOY OF THE RESPONDENT, SAVE AND EXCEPT FOREMEN AND

PERSONS ABOVE THE RANK OF FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

20. FURTHER, SINCE THE CBRT LOCAL 304 REPRESENTS ALL OF THE EMPLOYEES IN THE ABOVE DESCRIBED UNIT, THE BOARD DECLARES THAT THE CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS LOCAL 304 IS THE BARGAINING AGENT FOR THE EMPLOYEES IN THE SAID UNIT.

21. IN VIEW OF THE COMMUNITY OF INTEREST BETWEEN MECHANICS AND SERVICEMEN IN THE EMPLOY OF THE RESPONDENT REPRESENTED BY THE CBRT LOCAL 304 AND THOSE REPRESENTED BY CUPE LOCAL 68 AND HAVING REGARD TO THE FACT THAT ALL OF THE MECHANICS AND SERVICEMEN ARE EMPLOYED IN THE SAME DEPARTMENT, THE BOARD DETERMINES THAT ALL MECHANICS AND SERVICEMEN IN THE EMPLOY OF THE RESPONDENT, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND INSPECTORS, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

22. HAVING REGARD TO THE DEGREE OF REPRESENTATION ENJOYED BY THE TWO TRADE UNIONS CONCERNED AMONG THE EMPLOYEES IN THE ABOVE DESCRIBED BARGAINING UNIT, THE BOARD FURTHER DIRECTS THAT A REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES IN THE UNIT.

23. VOTERS WILL BE GIVEN A CHOICE BETWEEN THE CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL 68 AND THE CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS LOCAL 304.

24. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

25. WHILE RECOGNIZING THAT A FEW OF THE EMPLOYEES CONCERNED ARE NOT PRESENTLY REPRESENTED BY ANY TRADE UNION, HAVING REGARD TO THE FACTORS DISCUSSED EARLIER IN THIS DECISION THE BOARD FURTHER DETERMINES THAT ALL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT SUB-FOREMEN, PERSONS ABOVE THE RANK OF SUB-FOREMAN, OFFICE AND CLERICAL STAFF, GAS AND WATER WORKERS, BUS AND TROLLEY COACH OPERATORS, MECHANICS AND SERVICEMEN, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

26. THE BOARD FURTHER DECLARES THAT THE CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL 68 IS THE BARGAINING AGENT FOR THE EMPLOYEES IN THE ABOVE DESCRIBED BARGAINING UNIT.

27. THE MATTER IS REFERRED TO THE REGISTRAR.



3644-73-R: MAN OF ARAN LTD. (APPLICANT) v. LOCAL 280 OF THE INTERNATIONAL BEVERAGE DISPENSERS' & BARTENDERS' UNION OF THE HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS' INTERNATIONAL UNION, A.F. of L., C.I.O., C.L.C. (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS H.J.F. ADE AND O. HODGES.

APPEARANCES AT THE HEARING: C. SYDNEY FROST FOR THE APPLICANT; J. A. RYDER, IAN ROLLAND AND MICHAEL GEZUK FOR THE RESPONDENT.

DECISION OF THE BOARD: JUNE 6, 1973.

1. THIS IS AN APPLICATION UNDER SECTION 55 OF THE LABOUR RELATIONS ACT. THE EVIDENCE ESTABLISHED THAT THE APPLICANT PURCHASED THE REAL PROPERTY AND CHATTELS OF THE PREMISES FORMERLY KNOWN AS MINTZ'S TAVERN FROM THE PARTNERS OF THAT ESTABLISHMENT. THE AFFIDAVIT FOR FILING UNDER THE BULK SALES ACT WHICH WAS SWORN TO BY THE PRESIDENT OF THE APPLICANT READS IN PART AS FOLLOWS:

AFFIDAVIT FOR FILING

2. THAT MAN OF ARAN LTD. PURCHASED CERTAIN ASSETS INCLUDING GOOD WILL OF MINTZ TAVERN BY MEANS OF A BILL OF SALE DATED NOVEMBER 8, 1972, FROM JOSEPH MINTZ AND ALEX MINTZ, BOTH OF THE CITY OF TORONTO, IN THE MUNICIPALITY OF METROPOLITAN TORONTO, CARRYING ON BUSINESS IN PARTNERSHIP UNDER THE FIRM NAME AND STYLE OF MINTZ TAVERN AS BARGAINOR TO MAN OF ARAN LTD. AS BARGAINEE. ...

2. THE LOUNGE LICENCE AND THE DINING ROOM LICENCE FORMERLY HELD BY JOSEPH AND ALEX MINTZ AS PARTNERS OF MINTZ'S TAVERN WERE ALSO TRANSFERRED TO THE APPLICANT.

3. AFTER THE PURCHASE MINTZ'S TAVERN WAS CLOSED AND FOLLOWING EXTENSIVE RENOVATIONS TO THE EXTERIOR AND A COMPLETE REFURBISHING OF THE INTERIOR OF THE PREMISES OVER A PERIOD OF APPROXIMATELY FOUR MONTHS, THE RESTAURANT AND TAVERN WAS REOPENED BY THE APPLICANT AND WAS CHRISTENED AS AN IRISH PUB UNDER THE NAME OF MAN OF ARAN. THE NAME OF THE PREMISES WAS ADOPTED FROM A GROUP OF ISLANDS LOCATED OFF THE COAST OF IRELAND. THE DECOR OF THE REFURBISHED PREMISES, THE MENU OF THE RESTAURANT, THE NATIONALITY AND ACCENT OF THE WAITERS WERE ALL DESIGNED TO PRODUCE THE EFFECT OF AN AUTHENTIC IRISH PUB.

4. THE APPLICANT ARGUED THAT THE ACQUISITION OF THE PREMISES AND CHATTELS WAS MERELY A PURCHASE OF ASSETS RATHER THAN THE SALE OF A BUSINESS WITHIN THE MEANING OF SECTION 55 OF THE ACT. IN THE ALTERNATIVE THE APPLICANT TOOK THE POSITION THAT IF THE BOARD SHOULD FIND THAT A SALE OF A BUSINESS HAD IN FACT TAKEN PLACE WITHIN THE MEANING OF SECTION

55, THE BOARD SHOULD TERMINATE ANY BARGAINING RIGHTS HELD BY THE RESPONDENT (THE EXISTENCE OF SUCH BARGAINING RIGHTS WAS CHALLENGED BY THE APPLICANT) ON THE GROUNDS THAT THE APPLICANT HAD CHANGED THE CHARACTER OF THE BUSINESS SO THAT IT WAS SUBSTANTIALLY DIFFERENT FROM THE BUSINESS FORMERLY CARRIED ON BY MINTZ'S TAVERN.

5. HAVING CONSIDERED ALL THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES WITH RESPECT THERETO, THE BOARD FINDS THAT PRIOR TO THE TRANSACTION BETWEEN THE APPLICANT AND THE OWNERS OF MINTZ'S TAVERN, THE RESPONDENT ENTERED INTO A SHORT FORM OF AGREEMENT WITH THE OWNERS OF MINTZ'S TAVERN WHICH INCORPORATED BY REFERENCE THE PROVISIONS OF THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE TORONTO HOTEL ASSOCIATION.

6. THE BOARD FURTHER FINDS THAT THE TRANSACTION BETWEEN THE APPLICANT AND THE OWNERS OF MINTZ'S TAVERN WAS SUBSTANTIALLY MORE THAN A MERE PURCHASE OF ASSETS BUT AMOUNTED TO THE SALE OF A BUSINESS WITHIN THE MEANING OF SECTION 55 OF THE ACT. IN REACHING THIS CONCLUSION THE BOARD GAVE EFFECT TO THE EVIDENCE THAT THE BULK SALES AFFIDAVIT CONFIRMED THAT THE APPLICANT HAD PURCHASED THE "GOODWILL" OF THE BUSINESS OF MINTZ'S TAVERN AND ALSO THE EVIDENCE THAT THE APPLICANT HAD APPLIED FOR AND ACCEPTED A TRANSFER OF THE LOUNGE LICENCE AND DINING ROOM LICENCE FORMERLY HELD BY THE OWNERS OF MINTZ'S TAVERN. THESE LICENCES WERE THE MOST ESSENTIAL INGREDIENT OF THE BUSINESS CARRIED ON BY MINTZ'S TAVERN AND SIMILARLY ARE AN ESSENTIAL INGREDIENT IN THE BUSINESS CARRIED ON BY THE APPLICANT.

7. FINALLY, WE FIND THAT THE DECOR, THE ATMOSPHERE, THE CUSTOMERS AND THE EMPLOYEES OF THE APPLICANT ARE DIFFERENT THAN THESE ASPECTS OF THE BUSINESS CARRIED ON UNDER THE NAME OF MINTZ'S TAVERN. THE NATURE OF THE BUSINESS WAS AND REMAINS A RESTAURANT AND TAVERN, AND INDEED, THE PRESENT BUSINESS OPERATES UNDER THE SAME LICENCES AS DID MINTZ'S TAVERN. HOWEVER, EVEN THOUGH THE NATURE OF THE BUSINESS REMAINS UNCHANGED, THE ATTRIBUTES OF THE BUSINESS HAVE CHANGED.

8. THE ISSUE BEFORE US IS WHETHER THE APPLICANT IS BOUND BY THE PROVISIONS OF A COLLECTIVE AGREEMENT WHICH THE RESPONDENT HAD ENTERED INTO WITH THE OWNERS OF MINTZ'S TAVERN OR WHETHER, AS THE APPLICANT ARGUES, THE APPLICANT IS ENTITLED TO THE RELIEF AFFORDED BY THE PROVISIONS OF SECTION 55(5) OF THE ACT.

9. SECTION 55(5) READS AS FOLLOWS:

THE BOARD MAY, UPON THE APPLICATION OF ANY PERSON, TRADE UNION OR COUNCIL OF TRADE UNIONS CONCERNED, MADE WITHIN SIXTY DAYS AFTER THE SUCCESSOR EMPLOYER REFERRED TO IN SUBSECTION 2 BECOMES BOUND BY THE COLLECTIVE AGREEMENT, OR WITHIN SIXTY DAYS AFTER THE TRADE UNION OR COUNCIL OF TRADE UNIONS HAS GIVEN A NOTICE UNDER SUBSECTION 3, TERMINATE THE BARGAINING

RIGHTS OF THE TRADE UNION OR COUNCIL OF TRADE UNIONS BOUND BY THE COLLECTIVE AGREEMENT OR THAT HAS GIVEN NOTICE, AS THE CASE MAY BE, IF, IN THE OPINION OF THE BOARD, THE PERSON TO WHOM THE BUSINESS WAS SOLD HAS CHANGED ITS CHARACTER SO THAT IT IS SUBSTANTIALLY DIFFERENT FROM THE BUSINESS OF THE PREDECESSOR EMPLOYER.

10. THE APPLICANT HAS ASKED THE BOARD TO FIND THAT THE APPLICANT HAS CHANGED THE CHARACTER OF THE BUSINESS SO THAT IT IS SUBSTANTIALLY DIFFERENT FROM THE BUSINESS CARRIED ON BY THE OWNERS OF MINTZ'S TAVERN. THE WORD "CHARACTER" AS USED IN SECTION 55(5) IS NOT, IN OUR VIEW, INTENDED TO BE SYNONYMOUS WITH THE WORD "NATURE". CHARACTER AS DEFINED IN THE CONCISE OXFORD DICTIONARY MEANS "DISTINCTIVE MARK, COLLECTIVE PECULIARITIES, SORT, STYLE, PERSON'S OR RACE'S IDIOSYNCRASY". BY WAY OF EXAMPLE OF A CHANGE IN CHARACTER OF A BUSINESS, WE WOULD CITE THE INSTANCE OF A MANUFACTURER OF BABY SHOES WHO SOLD THE BUSINESS AND THE PURCHASERS OF THE BUSINESS NO LONGER MANUFACTURE BABY SHOES BUT ENGAGES IN THE MANUFACTURE OF AUTOMOBILE PARTS. IN SUCH AN INSTANCE IT CAN BE SAID THAT THE CHARACTER OF THE BUSINESS HAS CHANGED. EVEN THOUGH THE NATURE OR ESSENCE OF THE BUSINESSES IS MANUFACTURING, THE DIFFERENT PRODUCTS DISTINGUISH THE CHARACTER OF THE BUSINESSES. SIMILARLY, EVEN THOUGH THE DIFFERENCES BETWEEN RESTAURANT AND TAVERN BUSINESSES MAY BE MORE SUBTLE IN VIEW OF THE FACT THAT FOOD AND DRINK ARE SOLD, THE DIFFERENT CHARACTERS OF THE BUSINESSES MAY BE VERY REAL.

11. WE FIND ON ALL THE EVIDENCE IN THE INSTANT CASE THAT WHILE THE NATURE OR ESSENCE OF THE BUSINESS CARRIED ON BY THE APPLICANT IS THAT OF A RESTAURANT AND TAVERN, HOWEVER, THE CHARACTER OF THE RESTAURANT AND TAVERN IS THAT OF AN IRISH PUB. IT IS THIS CHARACTER WHICH READILY DISTINGUISHES THE APPLICANT'S BUSINESS FROM MINTZ'S TAVERN. WHATEVER THE CHARACTER OF THE RESTAURANT AND TAVERN BUSINESS CARRIED ON UNDER THE NAME AND STYLE OF MINTZ'S TAVERN, IT CAN CLEARLY BE SAID THAT MINTZ'S TAVERN COULD NOT BE PROPERLY CHARACTERIZED AS AN IRISH PUB.

12. IN ORDER TO ESTABLISH THE ATMOSPHERE OF AN AUTHENTIC IRISH PUB, THE APPLICANT'S WAITERS ARE ALL OF IRISH ORIGIN AND SPEAK IN A MANNER THAT CLEARLY DISTINGUISHES THEM FROM OTHER NATIONALITIES. IT IS READILY APPARENT THAT MANY PEOPLE WHO ARE NOT OF IRISH ORIGIN WOULD BE INCONSISTENT WITH THE IMAGE OR ATMOSPHERE OF AN IRISH PUB IN THE SAME MANNER AS A CURLY, RED-HEADED, FRECKLED FACE IRISH WAITER WOULD BE INCONSISTENT WITH THE IMAGE OR ATMOSPHERE OF AN AUTHENTIC CHINESE RESTAURANT.

13. IT CANNOT BE SERIOUSLY SUGGESTED THAT THE MERE ESTABLISHMENT OF AN IRISH PUB OR ANY OTHER ETHNIC RESTAURANT IS CONTRARY TO THE PUBLIC GOOD OR PROHIBITED BY ANY LEGISLATION. SIMILARLY, ANY REASONABLE STEPS TAKEN TO IMPLEMENT THE DESIGN, EFFECT AND ATMOSPHERE OF AN IRISH PUB, INCLUDING THE EXCLUSIVE USE OF IRISH WAITERS, SHOULD NOT BE CONTRARY TO LAW. HOWEVER THAT MAY BE, WE FIND THAT THE RESTAURANT AND TAVERN BUSINESS CARRIED ON BY THE APPLICANT IS SUBSTANTIALLY CHANGED IN CHARACTER



FROM THE RESTAURANT AND TAVERN BUSINESS PREVIOUSLY CARRIED ON BY THE PREDECESSOR EMPLOYER AND THE APPLICANT IS ACCORDINGLY ENTITLED TO THE RELIEF PROVIDED BY SECTION 55(5) OF THE ACT. ALTHOUGH THE RESPONDENT ARGUED THAT THIS APPLICATION WAS UNTIMELY SINCE IT WAS MADE MORE THAN SIXTY DAYS AFTER THE SALE OF A BUSINESS TO THE APPLICANT, IT IS NOTED THAT THE APPLICANT DID NOT BECOME A SUCCESSOR EMPLOYER WITHIN THE MEANING OF SECTION 55(5) UNTIL THE RENOVATIONS OF THE PREMISES WERE COMPLETED AND THIS APPLICATION WAS MADE WITHIN SIXTY DAYS AFTER THE APPLICANT BECAME A SUCCESSOR EMPLOYER. WE ACCORDINGLY FIND THAT THE TIME LIMITS REFERRED TO IN SECTION 55(5) AS APPLICABLE TO THE APPLICANT AS A SUCCESSOR EMPLOYER COMMENCED TO RUN FROM THE TIME THAT THE APPLICANT BECAME A SUCCESSOR EMPLOYER, I.E. FROM THE TIME THAT THE APPLICANT EMPLOYED PERSONS WHO WOULD FALL WITHIN THE BARGAINING UNIT DEFINED IN THE COLLECTIVE AGREEMENT IN THIS MATTER. WE ACCORDINGLY FIND THAT THIS APPLICATION IS THEREFORE TIMELY.

14. FOR THE REASONS SET OUT ABOVE, THE BOARD THEREFORE DECLARES THAT THE RESPONDENT NO LONGER REPRESENTS THE EMPLOYEES OF THE APPLICANT AT TORONTO FOR WHOM IT HAS HERETOFORE BEEN THE BARGAINING AGENT.

3094-72-R: JUDITH MCGOLDRICK AND KATHLEEN DAOUST (APPLICANTS) V. THE CANADIAN UNION OF PUBLIC EMPLOYEES AND ITS LOCAL 1423 (RESPONDENT).

RE: COCHRANE NURSING HOME LTD.

BEFORE: D.E. FRANKS, VICE-CHAIRMAN, AND BOARD MEMBERS J.D. BELL AND A. MAIN.

DECISION OF THE BOARD: JUNE 7, 1973.

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2. THE SOLICITOR FOR THE APPLICANT AND THE SOLICITOR FOR THE RESPONDENT HAVE BOTH REQUESTED THE BOARD TO ORDER A VOTE TO DETERMINE THE WISHES OF THE EMPLOYEES AS QUICKLY AS POSSIBLE. ALTHOUGH THERE MAY BE MERIT IN THIS SUGGESTION THE BOARD HAS NOT AS YET HELD ITS INQUIRY INTO THE VOLUNTARY NATURE OF THE EVIDENCE UPON WHICH THIS APPLICATION FOR TERMINATION IS BASED. SUBSECTION 3 OF SECTION 49 OF THE LABOUR RELATIONS ACT READS AS FOLLOWS:

49.-(3) UPON AN APPLICATION UNDER SUBSECTION 1 OR 2, THE BOARD SHALL ASCERTAIN THE NUMBER OF EMPLOYEES IN THE BARGAINING UNIT AT THE TIME THE APPLICATION WAS MADE AND WHETHER NOT LESS THAN 50 PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT HAVE VOLUNTARILY SIGNIFIED IN WRITING AT SUCH TIME AS IS DETERMINED UNDER CLAUSE J OF SUBSECTION 2 OF SECTION 92 THAT THEY NO

LONGER WISH TO BE REPRESENTED BY THE TRADE UNION, AND, IF NOT LESS THAN 50 PER CENT HAVE SO SIGNIFIED, THE BOARD SHALL, BY A REPRESENTATION VOTE, SATISFY ITSELF THAT A MAJORITY OF THE EMPLOYEES DESIRE THAT THE RIGHT OF THE TRADE UNION TO BARGAIN ON THEIR BEHALF BE TERMINATED.

3. IN ORDER FOR THE BOARD TO EXERCISE THE STATUTORY POWER CONFERRED UPON IT IN SECTION 49 OF THE ACT THE BOARD MUST FIRST BE SATISFIED THAT THE EMPLOYEES IN THE BARGAINING UNIT HAVE VOLUNTARILY SIGNIFIED IN WRITING THEIR DESIRE TO TERMINATE THE BARGAINING RELATIONSHIP OF THE RESPONDENT TRADE UNION. THUS, THE BOARD IS UNABLE TO ACCEDE TO THE REQUEST OF BOTH THE APPLICANT AND THE RESPONDENT AND ORDER A VOTE IN THE ABSENCE OF A FINDING THAT THE PETITION PRESENTED IN THIS CASE EXPRESSES THE VOLUNTARY WISHES OF THE EMPLOYEES IN THE BARGAINING UNIT.

4. THE REGISTRAR IS DIRECTED TO LIST THIS MATTER FOR HEARING.

3855-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 527 (APPLICANT) v. COSTAIN ESTATES LIMITED (RESPONDENT).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS H. J. F. ADE AND E. BOYER.

DECISION OF THE BOARD: JUNE 7, 1973.

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4. THE BOARD FURTHER FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 108 OF THE LABOUR RELATIONS ACT.

5. THE RESPONDENT HAS REQUESTED A HEARING OF THIS APPLICATION BY THE BOARD AND HAS SET FORTH ITS REASONS IN SUPPORT OF THIS REQUEST. THE BOARD HAS CONSIDERED THE REASONS SET FORTH BY THE RESPONDENT.

6. IN APPLICATIONS FOR CERTIFICATION FILED UNDER THE CONSTRUCTION INDUSTRY PROVISIONS OF THE LABOUR RELATIONS ACT, THE BOARD INCLUDES FOR THE PURPOSES OF THE COUNT THOSE PERSONS IN THE BARGAINING UNIT WHO WERE ACTUALLY AT WORK ON THE DATE OF THE MAKING OF THE APPLICATION. ACCORDINGLY, THE PERSON WHOSE NAME APPEARS ON SCHEDULE D IS NOT INCLUDED FOR THE PURPOSES OF THE COUNT. THE RESPONDENT SEEKS THE EXCLUSION OF STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD FROM THE PROPOSED BARGAINING UNIT.

7. IN THE PAST THE BOARD HAS NOT EXCLUDED STUDENTS FROM BARGAINING UNITS DETERMINED IN APPLICATIONS FOR CERTIFICATION FILED UNDER THE CONSTRUCTION INDUSTRY PROVISIONS OF THE LABOUR RELATIONS ACT. THE BOARD HAS CONSIDERED THE REPRESENTATIONS OF THE RESPONDENT AND SEES NO REASON TO EXCLUDE STUDENTS FROM THE BARGAINING UNIT.

8. THE NAMES WHICH APPEAR ON THE TWELVE COMBINATION APPLICATIONS FOR MEMBERSHIP FILED BY THE APPLICANT CORRESPOND TO TWELVE OF THE SEVENTEEN NAMES WHICH APPEAR ON THE SCHEDULE A FILED BY THE RESPONDENT. HOWEVER, THE BOARD NOTES THAT EVEN IF THE PERSON WHOSE NAME APPEARS ON SCHEDULE D WERE INCLUDED FOR THE PURPOSES OF THE COUNT, THE APPLICANT WOULD STILL BE ENTITLED TO CERTIFICATION WITHOUT THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE.

9. IN APPLICATIONS FOR CERTIFICATION FILED UNDER THE CONSTRUCTION INDUSTRY PROVISIONS OF THE LABOUR RELATIONS ACT, THE BOARD NEED NOT HOLD A HEARING ON SUCH AN APPLICATION. REFERENCE IS MADE TO SECTION 91(13) OF THE LABOUR RELATIONS ACT. THE BOARD HAS CONSIDERED THE REPRESENTATIONS OF THE RESPONDENT AND IS OF THE OPINION THAT NO USEFUL PURPOSE WOULD BE SERVED IN HOLDING A HEARING OF THIS APPLICATION. ACCORDINGLY, THE REQUEST OF THE RESPONDENT FOR A HEARING IS DENIED. IN THE EVENT THAT THE RESPONDENT IS OF THE VIEW THAT THE BOARD HAS ERRED IN A MATERIAL RESPECT, IT IS OPEN TO THE RESPONDENT TO REQUEST THE BOARD TO RECONSIDER ITS DECISION PURSUANT TO THE PROVISIONS OF SECTION 95(1) OF THE LABOUR RELATIONS ACT.

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12. IN THE RESULT, A CERTIFICATE WILL ISSUE TO THE APPLICANT.

3301-72-R: OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION (APPLICANT) v. FIBERGLAS CANADA LIMITED (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: C. S. SULLIVAN FOR THE APPLICANT; JOHN P. SANDERSON AND F. W. HENKLEMAN FOR THE RESPONDENT.

DECISION OF THE BOARD: JUNE 7, 1973.

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2. THE APPLICANT IS APPLYING FOR A UNIT COMPOSED OF ALL LABORATORY EMPLOYEES OF THE RESPONDENT AT SARNIA INCLUDING TECHNICIANS BUT EXCLUDING DRAFTSMEN. THE UNIT PROPOSED BY THE RESPONDENT IS ALL TECHNICAL EMPLOYEES OF THE RESPONDENT AT SARNIA. THE RESPONDENT, HOWEVER, SUBMITS THAT THERE IS SUCH A COMMUNITY OF INTEREST BETWEEN THE LABORATORY TECHNICIANS AND DRAFTSMEN EMPLOYED BY THE RESPONDENT THAT BOTH GROUPS SHOULD BE INCLUDED IN THE SAME BARGAINING UNIT.

3. IN VIEW OF THE POSITION OF THE PARTIES, THE BOARD APPOINTED MR. J. A. MACDONALD, EXAMINER, TO INQUIRE INTO AND REPORT TO THE BOARD ON THE COMPOSITION OF THE BARGAINING UNIT, AND MORE PARTICULARLY ON THE COMMUNITY OF INTEREST BETWEEN EMPLOYEES OF THE RESPONDENT FALLING WITHIN



THE CLASSIFICATION OF "LABORATORY TECHNICIANS" AND PERSONS FALLING WITHIN THE CLASSIFICATION OF "DRAFTSMEN".

4. FOLLOWING THE RELEASE OF THE REPORT OF THE EXAMINER DATED APRIL 13, 1973, UPON THE REQUEST OF COUNSEL FOR THE RESPONDENT, THE BOARD LISTED THIS MATTER FOR CONTINUATION OF HEARING ON MAY 23, 1973 FOR THE PURPOSE OF HEARING THE REPRESENTATIONS OF THE PARTIES WITH RESPECT TO THE SAID REPORT.

5. THE PARTIES, WITHOUT PREJUDICE TO THEIR ORIGINAL POSITION, RECORDED THEIR AGREEMENT IN THE REPORT OF THE EXAMINER, THAT SHOULD THE BOARD FIND THE OTHER PARTY'S UNIT TO BE APPROPRIATE THEY WOULD AGREE TO THE COMPOSITION OF SUCH UNIT IN ACCORDANCE WITH THE LIST OF EMPLOYEES AT THE DATE OF APPLICATION COVERING THE RESPECTIVE UNITS, AS ORIGINALLY SUBMITTED BY THE RESPONDENT. THAT IS TO SAY, SHOULD THE APPLICANT'S UNIT BE FOUND TO BE APPROPRIATE, THE UNIT WOULD BE COMPOSED OF THE 26 PERSONS ON THE RESPONDENT'S LIST BY NAMED CLASSIFICATIONS DESIGNATED AS BEING IN THE UNIT PROPOSED BY THE APPLICANT. ON THE OTHER HAND, SHOULD THE RESPONDENT'S UNIT BE FOUND TO BE APPROPRIATE, THE UNIT WOULD BE COMPOSED OF THE 44 PERSONS ON THE RESPONDENT'S LIST BY NAMED CLASSIFICATIONS DESIGNATED AS BEING IN THE UNIT PROPOSED BY THE RESPONDENT.

6. THE THREE DIVISIONS OF THE RESPONDENT'S OPERATIONS IN SARNIA ARE ITS MANUFACTURING PLANT WHICH PRODUCES A WIDE RANGE OF "GLASS FIBER" (WOOL) INSULATION PRODUCTS, THE CORPORATE QUALITY ASSURANCE GROUP, WHICH IS RESPONSIBLE TO ENSURE THAT THE LEVEL OF QUALITY OF ALL PRODUCTS MANUFACTURED IN THE RESPONDENT'S WOOL PLANTS MEETS THE STANDARD SET BY THIS GROUP, AND THE TECHNICAL CENTRE WHICH ENCOMPASSES THE FUNCTIONS OF CENTRAL ENGINEERING AND RESEARCH AND DEVELOPMENT. THE CENTRAL ENGINEERING GROUP IS RESPONSIBLE FOR THE DESIGN AND CONSTRUCTION OF ALL NEW MANUFACTURING FACILITIES AND FOR THE MAJOR MODIFICATIONS TO EXISTING MANUFACTURING FACILITIES AT ALL COMPANY LOCATIONS. IT ALSO PROVIDES A TECHNICAL SERVICE TO MANUFACTURING OPERATIONS AT EACH OF THE RESPONDENT'S PLANTS TO MAINTAIN ITS PROCESSES AT OPTIMUM EFFICIENCY. THE RESEARCH AND DEVELOPMENT GROUP IS COMPOSED OF SCIENTISTS, CHEMISTS, ENGINEERS AND SUPPORT STAFF ENGAGED IN DOING APPLIED RESEARCH DIRECTED TO NEW PRODUCTS AND THE DEVELOPMENT OF PRODUCTS AS AN EXTENSION TO THE RESPONDENT'S EXISTING PRODUCT LINES.

7. THE NORMAL PROGRESS OF A PROJECT COMMENCES AS RESEARCH INVESTIGATION WORK, WHICH BECOMES A DEVELOPMENT PROJECT ON PILOT SCALE AND THEN BECOMES AN ENGINEERING PROJECT AS IT IS SCALED UP TO PRODUCTION AND COMMERCIAL LEVEL. THE DEVELOPMENT WORK GENERALLY IS NOT DONE BY ONE GROUP OR DEPARTMENT. THE EVIDENCE IS THAT THE TRANSITION FROM ONE STAGE TO ANOTHER REQUIRES CLOSE INTERCHANGE BETWEEN THE FUNCTIONAL GROUPS OUTLINED ABOVE. DURING EACH STAGE THERE IS A REQUIREMENT FOR ENGINEERING DESIGN AND THIS DESIGN CAN BE HANDLED BY THE RESEARCH AND DEVELOPMENT GROUP OR THE ENGINEERING GROUP DEPENDING ON THE PROJECT. ENGINEERING DRAFTSMEN ARE SOMETIMES USED FOR THE DESIGN OF THE EQUIPMENT THAT WILL BE USED IN THE PILOT STAGE. ALSO, SOMETIMES MEMBERS OF THE RESEARCH

AND DEVELOPMENT GROUP ARE INVOLVED IN THE SCALING UP OF A NEW PROCESS UNTIL IT REACHES A COMMERCIAL LEVEL. CENTRAL ENGINEERING AND RESEARCH AND DEVELOPMENT EMPLOYEES OCCUPY THE SAME PREMISES ALTHOUGH THERE IS ALSO ANOTHER BUILDING WHERE SOME DEVELOPMENT EMPLOYEES ARE LOCATED. WHILE DRAFTSMEN WORKING IN ENGINEERING GROUPS AND TECHNICIANS WORKING IN THE RESEARCH GROUP ARE NOT COMPLETELY INTERCHANGEABLE IN FUNCTIONS, ASPECTS OF THEIR WORK ARE SIMILAR IN NATURE.

8. BASED ON ALL OF THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER WHICH IS ONLY BRIEFLY OUTLINED ABOVE, WE ARE SATISFIED THAT THERE IS BOTH AN INTEGRATION OF THE WORK FUNCTIONS OF THE LABORATORY TECHNICIANS AND DRAFTSMEN EMPLOYED BY THE RESPONDENT AND A COMMUNITY OF INTEREST BETWEEN THE TWO GROUPS WHICH MAKES THE TWO CLASSIFICATIONS TOGETHER AN APPROPRIATE UNIT FOR COLLECTIVE BARGAINING.

9. THE BOARD ACCORDINGLY FINDS THAT ALL TECHNICAL EMPLOYEES OF THE RESPONDENT AT SARNIA, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE AND CLERICAL STAFF, PROFESSIONAL ENGINEERS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED UNDER A CO-OPERATIVE UNIVERSITY TRAINING PROGRAM, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION LOCAL 9-14, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

10. FOR PURPOSES OF CLARITY THE BOARD DECLARES THAT THE TERM "TECHNICAL EMPLOYEES" ENCOMPASSES BOTH LABORATORY TECHNICIANS AND DRAFTSMEN.

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12. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

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3362-72-R: TEAMSTERS LOCAL UNION 879 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. E & E SEEGMILLER LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS J. D. BELL AND E. BOYER.

APPEARANCES AT THE HEARING: I. J. THOMSON AND DON SWAIT FOR THE APPLICANT; J. P. SANDERSON AND S. C. BERNARDO FOR THE RESPONDENT AND JAMES D. GRAHLMAN FOR THE GROUP OF EMPLOYEES.

DECISION OF THE BOARD:

JUNE 8, 1973.

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5. THE RESPONDENT SUBMITTED THAT THE APPLICATION WAS PREMATURE BECAUSE THE NUMBER OF TRUCK DRIVERS IN THE EMPLOY OF THE RESPONDENT AT THE TIME THE APPLICATION WAS MADE WAS NOT REPRESENTATIVE OF THE NUMBER OF TRUCK DRIVERS WHO WOULD BE EMPLOYED BY THE RESPONDENT DURING THE SUMMER. HAVING REGARD TO THE REPRESENTATIONS AT THE HEARING, THE BOARD FINDS NO REASON TO DELAY THE CONSIDERATION OF THIS APPLICATION. IN APPLICATIONS FOR CERTIFICATION FILED UNDER THE CONSTRUCTION INDUSTRY PROVISIONS OF THE LABOUR RELATIONS ACT, THE BOARD NEED NOT HAVE REGARD TO ANY INCREASE IN THE NUMBER OF EMPLOYERS IN THE BARGAINING UNIT AFTER THE APPLICATION WAS MADE. REFERENCE IS MADE TO SECTION 108(2) OF THE LABOUR RELATIONS ACT.

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8. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

1246-71-R: ONTARIO PRECAST CONCRETE MANUFACTURERS' ASSOCIATION, ERECTORS DIVISION (APPLICANT) v. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 AND LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, ONTARIO PROVINCIAL COUNCIL (RESPONDENTS) v. ELECTRICAL POWER SYSTEMS CONSTRUCTION ASSOCIATION (INTERVENER #1).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING:

W.J. HEMMERICK, Q.C., AND W.A. WHITE FOR THE APPLICANT; R. KOSKIE, A. NEIL, M.J. REILLY AND R. FORD FOR THE RESPONDENTS; AND B. H. STEWART, H. A. BERESFORD, W.J. CHENERY AND G. A. PICKELL APPEARING FOR INTERVENER #1, ELECTRICAL POWER SYSTEMS CONSTRUCTION ASSOCIATION AND ALSO FOR HYDRO ELECTRIC POWER COMMISSION OF ONTARIO.

DECISION OF THE BOARD:

JUNE 8, 1973.

1. THIS IS AN APPLICATION FOR ACCREDITATION IN WHICH THE ONTARIO PRECAST CONCRETE MANUFACTURERS' ASSOCIATION, ERECTORS DIVISION, HEREINAFTER REFERRED TO AS "THE ASSOCIATION" SEEKS TO BE ACCREDITED FOR "ALL EMPLOYEES OF EMPLOYERS ENGAGED IN ALL PHASES OF THE ERECTION AND FINISHING OF PRECAST CONCRETE PRODUCTS AND OTHER COMPONENTS IN THE BUILDING AND CONSTRUCTION INDUSTRY WITHIN THE PROVINCE OF ONTARIO". THIS PROPOSED UNIT OF EMPLOYERS MUST BE VIEWED AS BEING RESTRICTED TO AT LEAST THOSE EMPLOYERS FOR WHOSE EMPLOYEES THE RESPONDENT, LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506, HEREINAFTER REFERRED TO AS "LOCAL 506", AND/OR LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA,



ONTARIO PROVINCIAL COUNCIL, HEREINAFTER REFERRED TO AS "THE COUNCIL", HAVE BARGAINING RIGHTS. IT SHOULD BE NOTED THAT FOR THE PURPOSES OF THIS DECISION THE QUESTION AS TO WHO IS THE RESPONDENT, LOCAL 506, THE COUNCIL, OR BOTH IS NOT IN ISSUE.

2. THIS APPLICATION WAS FIRST LISTED FOR HEARING FOR FEBRUARY 16, 1972 BUT WAS ADJOURNED AT THE REQUEST OF THE APPLICANT, PENDING THE MAKING OF CERTAIN DECISIONS IN ANOTHER APPLICATION FOR ACCREDITATION INVOLVING THE GENERAL CONTRACTORS' SECTION OF THE TORONTO CONSTRUCTION ASSOCIATION AND LOCAL 506, FILE NO. 992-71-R. THE CASE WAS AGAIN LISTED FOR HEARING ON FEBRUARY 26, 1973 AT WHICH TIME IT WAS AGAIN ADJOURNED AT THE REQUEST OF THE APPLICANT IN ORDER TO ENABLE HIM TO MEET CERTAIN MATTERS RAISED BY THE BOARD. THE APPLICATION WAS AGAIN LISTED FOR HEARING FOR APRIL 11, 1973 AND APRIL 17, 1973. AT THE COMMENCEMENT OF THE APRIL 11TH HEARING, COUNSEL FOR THE ASSOCIATION AND COUNSEL FOR LOCAL 506 FOR THE FIRST TIME CHALLENGED THE STATUS OF TWO INTERVENERS, HYDRO ELECTRIC POWER COMMISSION OF ONTARIO, HEREINAFTER REFERRED TO AS "ONTARIO HYDRO" AND THE ELECTRICAL POWER SYSTEMS CONSTRUCTION ASSOCIATION, HEREINAFTER REFERRED TO AS "EPSCA" TO PARTICIPATE IN THESE PROCEEDINGS. BOTH ONTARIO HYDRO AND EPSCA HAD FILED INTERVENTIONS DATED DECEMBER 13, 1971. THE EPSCA INTERVENTION IS ON FORM 65, INTERVENTION, ACCREDITATION OR TERMINATION OF ACCREDITATION AS BARGAINING AGENT, CONSTRUCTION INDUSTRY, AND THE ONTARIO HYDRO INTERVENTION IS ON FORM 68, EMPLOYER INTERVENTION, APPLICATION FOR ACCREDITATION, CONSTRUCTION INDUSTRY. COPIES OF THESE INTERVENTIONS WERE SERVED ON THE ASSOCIATION, LOCAL 506 AND THE COUNCIL IN DECEMBER, 1971. AFTER HEARING THE REPRESENTATIONS OF THE PARTIES THE MATTER WAS ADJOURNED TO APRIL 17TH AT WHICH TIME EVIDENCE AND ARGUMENT WERE HEARD WITH RESPECT TO THE STATUS OF THE TWO INTERVENERS.

3. THE INTERVENERS' INTEREST IN THESE PROCEEDINGS, ACCORDING TO THEIR INTERVENTIONS, STEMS IN PART FROM THE FACT THAT THE ASSOCIATION IS SEEKING TO BE ACCREDITED FOR ALL SECTORS OF THE CONSTRUCTION INDUSTRY, INCLUDING THE ELECTRICAL POWER SYSTEMS SECTOR. WHILE THE WORD "SECTOR" DOES NOT APPEAR IN THE UNIT PROPOSED BY THE ASSOCIATION AND AGREED TO BY THE RESPONDENTS, THE FACT THAT ALL SECTORS ARE TO BE INCLUDED IS A FAIR INFERENCE FROM THE WORDS "IN THE BUILDING AND CONSTRUCTION INDUSTRY" IN THE PROPOSED UNIT. AT ALL EVENTS, DURING THE HEARING ON APRIL 17TH THERE WAS NO SUGGESTION FROM THE ASSOCIATION OR THE RESPONDENTS THAT THE ELECTRICAL POWER SYSTEMS SECTOR WAS NOT TO BE INCLUDED. BY VIRTUE OF SECTION 114(1) OF THE LABOUR RELATIONS ACT THE BOARD IS TO DETERMINE THE UNIT OF EMPLOYERS APPROPRIATE FOR COLLECTIVE BARGAINING IN A PARTICULAR GEOGRAPHIC AREA AND SECTOR AND THE BOARD NEED NOT CONFINE THE UNIT TO ONE GEOGRAPHIC AREA OR SECTOR BUT MAY, IF IT CONSIDERS IT ADVISABLE, COMBINE AREAS OR SECTORS OR BOTH OR PARTS THEREOF. IT IS CLEAR FROM THIS SECTION THAT THE BOARD IS GIVEN A DISCRETION TO COMBINE AREAS OR SECTORS. UP TO THE PRESENT TIME WHILE THE BOARD HAS IN SOME CASES COMBINED SOME SECTORS, IT HAS NEVER ISSUED AN ACCREDITATION CERTIFICATE COVERING THE SECTORS DEFINED IN SECTION 106(E). THUS THE MERE FACT THAT THE ASSOCIATION HAS PROPOSED A UNIT COMBINING ALL SECTORS IN ALL GEOGRAPHIC AREAS OF THE PROVINCE DOES NOT MEAN THAT THE BOARD WILL FIND SUCH UNIT

APPROPRIATE EITHER AS TO DESCRIPTION OR WITH RESPECT TO THE PROPOSED AREA OR SECTORS. IN OTHER WORDS, THE QUESTION AS TO WHETHER, INTER ALIA, THE BOARD WILL INCLUDE THE ELECTRICAL POWER SYSTEMS SECTOR IN ANY FINAL ACCREDITATION ORDER WHICH MAY BE GRANTED IS CLEARLY IN ISSUE IN THIS CASE.

4. SECTION 83 OF THE BOARD'S RULES OF PROCEDURE PROVIDES THAT WHERE AN APPLICATION FOR ACCREDITATION IS MADE:

AN EMPLOYERS' ORGANIZATION, TRADE UNION OR COUNCIL OF TRADE UNIONS THAT IS SERVED WITH A NOTICE OF APPLICATION OR THAT CLAIMS TO HAVE AN INTEREST IN THE APPLICATION, SHALL FILE ITS INTERVENTION, IF ANY, IN QUADRUPLICATE IN FORM 65 NOT LATER THAN THE TERMINAL DATE FOR THE APPLICATION AND, IF IT FAILS TO FILE SUCH AN INTERVENTION, IT MAY BE DEEMED BY THE BOARD TO HAVE ABANDONED ANY CLAIM TO HAVE ANY INTEREST IN THE APPLICATION.

"EMPLOYERS' ORGANIZATION" FOR THE PURPOSES OF SECTION 107 TO 124 OF THE LABOUR RELATIONS ACT, WHICH SECTIONS INCLUDE ALL THE SECTIONS DEALING WITH ACCREDITATION, IS DEFINED IN SECTION 106(d) AS:

...AN ORGANIZATION THAT IS FORMED FOR THE PURPOSE OF REPRESENTING OR REPRESENTS EMPLOYERS AS DEFINED IN CLAUSE (c);

5. AT THE HEARING ON APRIL 17TH EVIDENCE WAS ADDUCED WITH RESPECT TO THE FORMATION OF EPSCA. THIS EVIDENCE INCLUDED EVIDENCE RESPECTING THE INITIAL STEPS TAKEN TO FORM AN ASSOCIATION, EXHIBITS 1, 2, 3, 12 AND 13 AND THE MINUTES OF THE MEETING AT WHICH EPSCA WAS FORMED, EXHIBIT 4. THE CONSTITUTION OF EPSCA, EXHIBIT 5, AND ITS BY-LAW No. 1 - GENERAL ADMINISTRATION, EXHIBIT 6, WERE INTRODUCED AND IDENTIFIED BY THE SECRETARY-TREASURER OF EPSCA SINCE ITS FORMATION, MR. G. A. PICKELL. MR. PICKELL ALSO TESTIFIED WITH RESPECT TO MEMBERS BELONGING TO EPSCA (SEE EXHIBITS 7 AND 14), ANNUAL MEETINGS, MEETINGS OF MEMBERS AND ATTEMPTS BY EPSCA TO NEGOTIATE A MULTI-TRADE COLLECTIVE AGREEMENT COVERING EMPLOYEES OF ONTARIO HYDRO AND THOSE CONTRACTORS WORKING FOR ONTARIO HYDRO.

6. THIS EVIDENCE ESTABLISHES, PRIMA FACIE, THAT EPSCA IS AN EMPLOYERS' ORGANIZATION, AND INDEED A VIABLE ORGANIZATION, WITHIN THE MEANING OF SECTION 106(d) OF THE ACT AND SECTION 83 OF THE BOARD'S RULES OF PROCEDURE. HOWEVER, IT IS ARGUED BY COUNSEL FOR THE APPLICANT THAT BEFORE THERE CAN BE AN EMPLOYERS' ORGANIZATION THERE MUST BE STABILITY IN THE ORGANIZATION AND THERE CAN BE NO STABILITY IN EPSCA BECAUSE THE MEMBERS COME AND GO WITH THE EXCEPTION OF ONTARIO HYDRO. THIS ARGUMENT IS BASED ON ARTICLE 8 OF THE CONSTITUTION, REQUIRING MEMBERSHIP IN EPSCA DURING THE CURRENCY OF THE MEMBER'S CONTRACT WITH ONTARIO HYDRO AND ARTICLE 24 OF BY-LAW No. 1, WHICH PROVIDES FOR IPSO FACTO TERMINATION FROM EPSCA UPON RECEIPT OF WRITTEN NOTICE FROM ONTARIO HYDRO OF ITS ACCEPTANCE



OF THE CONTRACTED WORK OF THE MEMBER. IN SOMEWHAT SIMILAR VEIN, COUNSEL FOR LOCAL 506 SUBMITTED THAT EPSCA IS NOT A "BONA FIDE EMPLOYERS' ORGANIZATION", THAT IT IS NOT AN ORGANIZATION FOR THE PURPOSE OF "GENUINELY REPRESENTING EMPLOYERS" AND THAT IT IS NOT AN ORGANIZATION "FORMED FOR THE PURPOSE OF REPRESENTING EMPLOYERS" WITHIN THE MEANING OF SECTION 106(D) OF THE ACT, BUT RATHER TO SERVE THE BEST INTERESTS OF HYDRO. IN SUPPORT OF THIS ARGUMENT RELIANCE WAS PLACED ON THE MAKE-UP OF THE BOARD OF DIRECTORS (ARTICLES 4 AND 11 OF BY-LAW No. 1), THE VOTING RIGHTS OF MEMBERS (ARTICLE 18 OF BY-LAW No. 1) AND THE REQUIREMENTS RESPECTING MEMBERSHIP (SECTION 8 OF THE CONSTITUTION AND ARTICLE 24 OF BY-LAW No. 1). REFERENCE WAS ALSO MADE TO THE LABOUR REQUIREMENTS CLAUSE (EXHIBIT 15) WHICH ACCOMPANIES ONTARIO HYDRO'S NOTICE TO CONTRACTORS SUBMITTING TENDERS ON HYDRO CONTRACTS. THE APPENDIX TO THIS CLAUSE STATES THAT A SUCCESSFUL TENDERER AND HIS SUBCONTRACTORS WILL BE REQUIRED TO APPLY FOR AND MAINTAIN MEMBERSHIP IN EPSCA.

7. THERE CAN BE NO QUESTION THAT ONTARIO HYDRO PLAYED A DOMINANT ROLE IN THE FORMATION OF EPSCA AND, UNDER THE CONSTITUTION AND BY-LAW No. 1, OCCUPIES A POSITION OF STRENGTH WITHIN THE ORGANIZATION. IT WOULD ALSO APPEAR TO BE TRUE THAT THERE IS IN EFFECT A MAINTENANCE OF MEMBERSHIP PROVISION IN THE CONSTITUTION (SECTION 8) DURING A MEMBER'S CONTRACT WITH ONTARIO HYDRO AND THAT MEMBERSHIP WILL FLUCTUATE, HAVING REGARD TO ARTICLE 24 OF BY-LAW No. 1. ON THE OTHER HAND, SECTION 4 OF THE CONSTITUTION PROVIDES FOR OPEN MEMBERSHIP FOR EMPLOYERS ENGAGED IN THE ELECTRICAL POWER SYSTEMS SECTOR OF THE CONSTRUCTION INDUSTRY AND THE UNCONTRADICTED EVIDENCE OF MR. PICKELL WHO, IN ADDITION TO BEING THE SECRETARY-TREASURER OF EPSCA, IS THE SENIOR LABOUR RELATIONS OFFICER FOR ONTARIO HYDRO, WAS THAT THE LABOUR REQUIREMENTS CLAUSE (EXHIBIT 15) HAS NOT BEEN ENFORCED BY ONTARIO HYDRO IN PRACTICE AND IN FACT CERTAIN PRECAST WORK HAS BEEN DONE BY NON-MEMBERS OF EPSCA.

8. BE THAT AS IT MAY, WE AGREE WITH COUNSEL FOR EPSCA THAT THE ONLY QUESTION FOR THE BOARD TO CONSIDER AT THIS TIME IS WHETHER EPSCA IS AN EMPLOYERS' ORGANIZATION THAT WAS FORMED FOR THE PURPOSE OF REPRESENTING EMPLOYERS OR THAT REPRESENTS EMPLOYERS IN THE CONSTRUCTION INDUSTRY. WE ARE NOT HERE CONCERNED WITH WHETHER IT IS A STABLE ORGANIZATION OR THAT IT MAY HAVE PROVISIONS REQUIRING MEMBERSHIP UNDER CERTAIN CONDITIONS. THOSE ARE NOT THE QUESTIONS WHICH THE STATUTE REQUIRES US TO CONSIDER. IT MAY BE, AND WE STRESS THE WORD "MAY" THAT THOSE ARE QUESTIONS WHICH WILL ARISE SHOULD THE BOARD BE REQUIRED IN THE FUTURE TO DETERMINE AN APPLICATION FOR ACCREDITATION BY EPSCA, HAVING REGARD TO THE PROVISIONS OF SECTION 115(3) OF THE ACT WITH RESPECT TO WHAT IS "A PROPERLY CONSTITUTED ORGANIZATION", BUT THAT IS NOT THE QUESTION BEFORE US IN THIS CASE.

9. IT IS ARGUED, HOWEVER, THAT EPSCA WAS NOT FORMED FOR THE PURPOSE OF REPRESENTING EMPLOYERS BUT ONLY TO REPRESENT THE INTERESTS OF ONE EMPLOYER, NAMELY ONTARIO HYDRO, AND IN THAT SENSE WAS NOT BONA FIDE OR GENUINE. THERE CAN BE NO QUESTION THAT THE ASSOCIATION WILL SERVE THE INTERESTS OF ONTARIO HYDRO. ON THE OTHER HAND, THERE IS NO EVIDENCE



TO SUGGEST THAT THE INTERESTS OF OTHER EMPLOYER MEMBERS WILL NOT ALSO BE SERVED. THE EVIDENCE IS CLEAR THAT A GOOD NUMBER OF OTHER EMPLOYERS PARTICIPATED IN THE FORMATION OF EPSCA AND THERE IS NO SUGGESTION THAT THEY DID SO ON ANYTHING BUT A VOLUNTARY BASIS. IT MAY WELL BE THAT OTHER EMPLOYER MEMBERS CONSIDER THEIR INTERESTS AND THOSE OF ONTARIO HYDRO TO BE MUTUAL. WHETHER THAT BE SO OR NOT, IT IS CLEAR THAT MEMBERS IN ADDITION TO ONTARIO HYDRO ARE CURRENTLY PARTICIPATING IN ACTIVE NEGOTIATIONS FOR A MULTI-TRADE AGREEMENT. IT SHOULD ALSO BE NOTED THAT SHOULD EPSCA BECOME AN ACCREDITED BARGAINING AGENT IN THE FUTURE, SECTION 120 OF THE ACT IMPOSES A DUTY OF FAIR REPRESENTATION ON IT, INTER ALIA, WITH RESPECT TO ITS MEMBERS.

10. HAVING REGARD, THEN, TO ALL THE ABOVE CONSIDERATIONS, WE FIND THAT EPSCA WAS FORMED FOR THE PURPOSE OF REPRESENTING EMPLOYERS IN THE CONSTRUCTION INDUSTRY AND NOT JUST THE INTERESTS OF ONTARIO HYDRO, THAT IT DOES IN FACT REPRESENT EMPLOYERS WHO OPERATE BUSINESSES IN THE CONSTRUCTION INDUSTRY AND NOT JUST ONTARIO HYDRO, THAT IT IS AN EMPLOYERS' ORGANIZATION AND, FURTHER, THAT IT IS A VIABLE ORGANIZATION. IT SHOULD BE NOTED THAT COUNSEL FOR THE APPLICANT SUGGESTED IN ARGUMENT THAT ONTARIO HYDRO WAS NOT AN EMPLOYER IN THE CONSTRUCTION INDUSTRY. THIS QUESTION WAS NOT RAISED IN ANY PLEADINGS BY THE APPLICANT AND SO NO DIRECT EVIDENCE WAS LED ON THIS POINT BY EPSCA. IT WOULD APPEAR, HOWEVER, FROM SECTION 3 OF THE CONSTITUTION, FROM THE LABOUR REQUIREMENTS CLAUSE AND FROM THE EVIDENCE OF MR. PICKELL RESPECTING ONTARIO HYDRO'S NEGOTIATIONS WITH THE ALLIED CONSTRUCTION COUNCIL SINCE 1952, THAT ONTARIO HYDRO IS AN EMPLOYER WHO OPERATES A BUSINESS IN THE CONSTRUCTION INDUSTRY. IN FACT THIS BOARD HAS SO FOUND IN THE HYDRO ELECTRIC POWER COMMISSION OF ONTARIO CASE, OLRB M.R., SEPT. 1968, P. 607 (SEE ALSO HYDRO ELECTRIC POWER COMMISSION OF ONTARIO, OLRB M.R., NOV. 1968, P. 802). IN THAT CASE THE BOARD MADE A FINDING THAT THE APPLICATION WAS ONE FALLING UNDER THE PROVISIONS OF SECTION 92 (NOW SECTION 108) OF THE LABOUR RELATIONS ACT. TO MAKE SUCH A FINDING THE BOARD HAD TO BE SATISFIED THAT BOTH THE APPLICANT TRADE UNION AND THE RESPONDENT EMPLOYER WAS A TRADE UNION AND EMPLOYER AS DEFINED BY SECTION 90(F) AND (C) RESPECTIVELY (NOW SECTION 106(F) AND (C)).

11. IN ITS INTERVENTION EPSCA MAKES THE FOLLOWING SUBMISSIONS RESPECTING ITS CLAIM TO AN INTEREST IN THE PROCEEDINGS:

1. UNCERTAIN AS TO BARGAINING UNIT SOUGHT.
2. THE INTERVENER OPPOSES THE INCLUSION OF ANY OF ITS MEMBERS IN ANY BARGAINING UNIT THAT RELATES TO THE ELECTRICAL POWERS SYSTEMS SECTOR.
3. THE INTERVENER OPPOSES THE INCLUSION OF ANY PART OF THE ELECTRICAL POWER SYSTEMS SECTOR IN THE BARGAINING UNIT.

TO SUPPORT THIS CLAIM EPSCA TENDERED EVIDENCE AT THE HEARING TO SHOW THAT TWO EMPLOYERS WHICH IT CLAIMED AS MEMBERS WOULD BE AFFECTED BY THIS APPLICATION. THESE TWO EMPLOYERS WERE BENNETT & WRIGHT LTD. AND CONNOLLY MARBLE, MOSAIC & TILE COMPANY LIMITED, HEREINAFTER REFERRED TO AS "CONNOLLY". WITH RESPECT TO THE FIRST, THE EVIDENCE ESTABLISHES THAT ALTHOUGH THAT COMPANY APPLIED FOR MEMBERSHIP, EPSCA DISCOVERED THAT ANOTHER COMPANY, BENNETT & WRIGHT (EASTERN) LTD., SHOULD HAVE APPLIED AND SO THE RECEIPT WAS MADE OUT IN THE LATTER COMPANY'S NAME AND IT WAS ASKED TO APPLY IN ITS PROPER NAME (EXHIBIT 10). IT DID NOT DO SO. BENNETT & WRIGHT (EASTERN) LTD. HAS WORKED ON ONTARIO HYDRO PROJECTS AT PICKERING FROM OCTOBER 5, 1971 TO AUGUST 31, 1972 BUT THE WORK RELATED TO PIPING AND NOT TO PRECAST WORK. THE APPLICANT INFORMED THE BOARD THAT IT AND THE RESPONDENT HAD AGREED THAT BENNETT & WRIGHT (EASTERN) LTD. WAS NOT AN EMPLOYER AFFECTED BY THE PRESENT APPLICATION FOR ACCREDITATION.

12. IT IS CLEAR THAT CONNOLLY WAS A MEMBER OF EPSCA AT THE TIME EPSCA'S INTERVENTION WAS FILED IN THIS CASE (EXHIBIT 8). IT IS ALSO CLEAR THAT THE WORK PERFORMED BY CONNOLLY WAS CERAMIC TILE AND NOT PRECAST WORK. CONNOLLY CEASED TO BE A MEMBER OF EPSCA BY THE BEGINNING OF JANUARY, 1972 BY REASON OF THE OPERATION OF ARTICLE 24 OF BY-LAW No. 1. IT WAS ARGUED THAT CONNOLLY'S MEMBERSHIP WAS SUSPECT SINCE THE SECRETARY-TREASURER OF THE COMPANY TESTIFIED THE REASON THE COMPANY JOINED WAS BECAUSE IT WAS TOLD IT WOULD NOT OTHERWISE GET THE JOB. HOWEVER, THE WITNESS WAS NOT PRESENT AT THIS CONVERSATION. IN ADDITION, A LETTER WAS FILED (EXHIBIT 16) ASKING CONNOLLY TO JOIN EPSCA AND POINTING OUT IT WAS A REQUIREMENT OF ALL SUB-TRADES ON THE JOB. THIS LETTER WAS NOT FROM ONTARIO HYDRO BUT FROM ANOTHER CONTRACTOR. IN ANY EVENT, IT IS CLEAR THAT CONNOLLY WANTED THE JOB IN QUESTION AND WAS QUITE PREPARED TO JOIN EPSCA IF THAT WAS A NECESSARY PRE-CONDITION TO GETTING THE WORK. WE ARE SATISFIED THAT CONNOLLY WAS A MEMBER OF EPSCA IN DECEMBER, 1971.

13. AS NOTED ABOVE IN PARAGRAPH 11, IN ADDITION TO RELYING ON MEMBERS AFFECTED BY THE APPLICATION TO SUPPORT ITS CLAIM TO AN INTEREST IN THE PROCEEDINGS, EPSCA ALSO RELIES ON ITS OPPOSITION TO THE INCLUSION OF ANY PART OF THE ELECTRICAL POWER SYSTEMS SECTOR IN THE BARGAINING UNIT CLAIMED TO BE APPROPRIATE BY THE APPLICANT. THE EVIDENCE ESTABLISHES THAT EPSCA IS VITALLY CONCERNED WITH THIS SECTOR. IN FACT IT IS APPARENTLY EPSCA'S CONTENTION THAT THIS SECTOR IS CONFINED TO ONTARIO HYDRO PROJECTS AND THAT IS THE REASON FOR THE PROVISIONS OF ARTICLE 24 OF BY-LAW No. 1 PROVIDING FOR THE TERMINATION OF EPSCA MEMBERSHIP WHEN A CONTRACTOR COMPLETES AN ONTARIO HYDRO PROJECT. IT WAS POINTED OUT, HOWEVER, THAT SECTION 4 OF THE CONSTITUTION CONTEMPLATES WIDER MEMBERSHIP THAN THOSE EMPLOYED ON HYDRO PROJECTS. EPSCA ARGUES THAT THE BOARD HAS NOT YET MADE ANY DETERMINATION AS TO WHAT CONSTITUTES THE ELECTRICAL POWER SYSTEMS SECTOR WITH WHICH IT IS VITALLY CONCERNED AND, FURTHER, THAT NO CRITERIA HAVE YET BEEN ESTABLISHED FOR DETERMINING HOW DIFFERENT SECTORS SHOULD BE GROUPED TOGETHER IN A SINGLE APPLICATION. AS WAS POINTED OUT EARLIER, THE BOARD HAS NOT AS YET ISSUED A DECISION INCORPORATING ALL SECTORS INTO ONE BARGAINING UNIT.

14. IT IS ARGUED, HOWEVER, THAT THE BOARD SHOULD RESTRICT INTERVENING ORGANIZATIONS TO THOSE WHO REPRESENT MEMBERS WHO WOULD BE AFFECTED BY THE APPLICATION AND THAT IN THIS CASE EPSCA DOES NOT IN FACT AT THIS TIME REPRESENT ANY SUCH MEMBERS. COUNSEL FOR EPSCA CONCEDED ITS CLAIM TO REPRESENT CONNOLLY WAS A PRETTY TECHNICAL ONE AND WE CERTAINLY AGREE WITH THAT CONCESSION. WE ARE UNABLE TO FIND ON THE EVIDENCE THAT BENNETT & WRIGHT (EASTERN) LTD. BECAME A MEMBER OF EPSCA. CONSEQUENTLY, IF EPSCA'S CASE RESTED SOLELY ON MEMBERSHIP, WE HAVE GRAVE DOUBTS AS TO WHETHER STATUS SHOULD BE GRANTED. IN THIS REGARD WE SHOULD ALSO MAKE IT CLEAR THAT WE WERE NOT IMPRESSED WITH THE ARGUMENT THAT EPSCA MIGHT AT SOME TIME IN THE FUTURE HAVE MEMBERS WHO WOULD BE AFFECTED BY A DECISION IN THIS CASE.

15. BUT EPSCA'S CLAIM IS NOT SO LIMITED. IT WOULD BE AFFECTED IN A BROAD SENSE BY ANY DECISION OF THE BOARD DETERMINING THE NATURE AND EXTENT OF THE ELECTRICAL POWER SYSTEMS SECTOR. WHILE THIS MAY NOT OF ITSELF BE SUFFICIENT TO CREATE AN INTEREST TO WARRANT STATUS IN THESE PROCEEDINGS, IT IS CLEAR THAT BEFORE THE BOARD WOULD INCLUDE THAT SECTOR AS PART OF THE UNIT OF EMPLOYERS SOUGHT BY THE APPLICANT, IT WOULD WANT SOME CLARIFICATION AS TO WHAT THE SECTOR COMPRISES. FURTHERMORE, BOTH THE ASSOCIATION AND THE RESPONDENTS AGREE ON THE INCLUSION OF THIS SECTOR IN THE UNIT OF EMPLOYERS. IT WOULD BE HELPFUL TO THE BOARD, IN ARRIVING AT A DECISION, TO HEAR EVIDENCE AND ARGUMENT OPPOSING SUCH INCLUSION, PARTICULARLY WHERE THERE HAS BEEN NO ACCREDITATION ORDER EMBRACING ALL SECTORS AND ONLY LIMITED CRITERIA CONTAINED IN OTHER BOARD DECISIONS DEALING WITH THE GROUPING OF SECTORS OR PARTS THEREOF IN A SINGLE UNIT OF EMPLOYERS. IT APPEARS TO THE BOARD THAT EPSCA COULD MAKE A USEFUL CONTRIBUTION ON BOTH OF THESE POINTS.

16. IN OPPOSITION TO THIS IT IS SUBMITTED THAT IF THE BOARD ALLOWS SUCH AN INTERVENTION, THERE WOULD BE NO LIMIT ON THE NUMBER OF ORGANIZATIONS OR, INDEED, SINGLE EMPLOYERS WHO MIGHT INTERVENE AND PROCEEDINGS WOULD BECOME INTERMINABLE. THE SIMPLE ANSWER TO THIS ARGUMENT IS - THAT HAS NOT HAPPENED IN THIS CASE. NOR HAS IT HAPPENED IN OTHER CASES WHERE THE BOARD HAS ADOPTED A LENIENT VIEW RESPECTING INTERVENING ORGANIZATIONS AND HAS IN FACT PERMITTED THEM TO INTERVENE AND "SPEAK TO THE MATTER OF THE APPROPRIATE UNIT OF EMPLOYERS FOR ACCREDITATION PROVIDING THEY COULD SHOW SOME CONNECTION WITH THE UNIT OF EMPLOYERS SOUGHT BY THE APPLICANT". (SEE ELECTRICAL CONSTRUCTION ASSOCIATION OF HAMILTON (BOARD FILE 1711-71-R, SEPT. 15, 1972.)) SHOULD A SITUATION DEVELOP IN THE FUTURE WHERE A NUMBER OF ORGANIZATIONS, WHICH HAVE NO DIRECT INTEREST IN THE PROCEEDINGS IN THE SENSE THAT THEIR MEMBERS ARE NOT INCLUDED IN THE UNIT OF EMPLOYERS, SEEK TO PARTICIPATE IN THE PROCEEDINGS, THE BOARD WOULD OF COURSE HAVE TO GIVE CONSIDERATION TO A CHANGE IN ITS PRESENT PRACTICE. INDEED, THE TIME MAY BE NOT FAR OFF FOR A GENERAL RECONSIDERATION OF THAT PRACTICE.

17. IN THE RESULT, AND HAVING REGARD TO ALL THE ABOVE CONSIDERATIONS, EPSCA WILL BE PERMITTED TO PARTICIPATE IN THESE PROCEEDINGS AS AN INTERVENER WITH RESPECT TO THE QUESTION OF THE INCLUSION OR EXCLUSION OF THE ELECTRICAL POWER SYSTEMS SECTOR IN THE APPROPRIATE UNIT OF EMPLOYERS, INCLUDING, IF IT SHOULD BE AN ISSUE, THE NATURE AND EXTENT OF THAT SECTOR. HOWEVER, WE SEE



NO REASON TO PERMIT EPSCA TO PARTICIPATE ON THE QUESTION OF THE GENERAL DESCRIPTION OF THE UNIT OR AS TO WHO IS THE RESPONDENT IN THIS PROCEEDING. THESE ARE NOT MATTERS ON WHICH IT HAS ANY DIRECT INTEREST OR ANY PARTICULAR EXPERTISE WHICH MIGHT BE OF ASSISTANCE TO THE BOARD, ANY MORE THAN MANY OTHER EMPLOYER ORGANIZATIONS. IF THE ELECTRICAL POWER SYSTEM SECTOR IS EXCLUDED FROM THE UNIT, EPSCA WOULD HAVE NO INTEREST AT ALL IN THE CASE. ACCORDINGLY, ITS REQUEST IN THIS REGARD IS DENIED.

18. WE TURN FINALLY TO DEAL WITH THE STATUS OF ONTARIO HYDRO WHICH FILED AN EMPLOYER INTERVENTION (FORM 68) LONG BEFORE IT WAS ENTITLED TO DO SO UNDER THE BOARD'S RULES OF PROCEDURE. ONTARIO HYDRO SEEKS TO INTERVENE ON THE SAME GROUNDS AS EPSCA. ONTARIO HYDRO IS NOT AN EMPLOYER AFFECTED BY THE APPLICATION IN THE SENSE OF BEING AN EMPLOYER WHICH WOULD BE INCLUDED IN THE APPROPRIATE UNIT OF EMPLOYERS. WHILE IN A SENSE ONTARIO HYDRO HAS SIMILAR INTERESTS TO EPSCA, WE ARE OF THE OPINION THAT IT WOULD BE DANGEROUS TO ESTABLISH A PRECEDENT PERMITTING INDIVIDUAL EMPLOYERS TO INTERVENE IN PROCEEDINGS WHICH DO NOT AFFECT THEM DIRECTLY. THE POTENTIAL NUMBER OF SUCH INTERVENERS WOULD BE VERY GREAT. IN ANY GIVEN ACCREDITATION APPLICATION THERE ARE ALWAYS A LARGE NUMBER OF EMPLOYERS, SOMETIMES NUMBERING IN THE THOUSANDS, WHO ARE DIRECTLY AFFECTED AND HAVE THE RIGHT TO INTERVENE AND, INDEED, ARE INVITED TO DO SO UNDER THE RULES. TO ADD TO THIS NUMBER WOULD MAKE AN ALREADY COMPLICATED ACCREDITATION PROCESS THAT MUCH MORE DIFFICULT. IT IS CLEAR THAT ONTARIO HYDRO IS A DRIVING FORCE BEHIND EPSCA AND THERE IS NO DOUBT IN OUR MINDS THAT ITS INTERESTS, IF ANY, WILL BE ADVANCED BY EPSCA IN ITS REPRESENTATIONS TO THE BOARD. IN THESE CIRCUMSTANCES, THE REQUEST BY ONTARIO HYDRO TO PARTICIPATE FURTHER IN THESE PROCEEDINGS IS DENIED AND ONTARIO HYDRO WILL NOT BE ENTITLED TO FURTHER NOTICE OF ANY PROCEEDINGS IN THIS MATTER.

3227-72-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. CANADIAN INDUSTRIES LIMITED (INGERSOLL WORKS) (RESPONDENT) v. INTERNATIONAL UNION OF DISTRICT 50, ALLIED & TECHNICAL WORKERS OF THE UNITED STATES AND CANADA (PREDECESSOR TRADE UNION).

BEFORE: D.E. FRANKS, VICE-CHAIRMAN, AND BOARD MEMBERS H.J.F. ADE AND O. HODGES.

APPEARANCES AT THE HEARING: LORNE INGLE FOR THE APPLICANT; C.G. RIGGS AND W.C. SPICER FOR THE RESPONDENT; PAT V. GRASSO FOR THE PREDECESSOR TRADE UNION.

DECISION OF THE BOARD:

JUNE 8, 1973.

1. THIS IS AN APPLICATION BY THE UNITED STEELWORKERS OF AMERICA FOR A DECLARATION UNDER SECTION 54 OF THE ACT. THE APPLICANT CLAIMS TO BE THE SUCCESSOR OF THE INTERNATIONAL UNION OF DISTRICT 50, ALLIED & TECHNICAL WORKERS OF THE UNITED STATES AND CANADA, (HEREINAFTER REFERRED TO AS "DISTRICT 50"), WHICH UNION WAS THE BARGAINING AGENT FOR A BARGAINING UNIT OF EMPLOYEES OF THE RESPONDENT. THE BASIS OF THE

APPLICANT'S CLAIM THAT IT IS THE SUCCESSOR TRADE UNION IS THAT CERTAIN EVENTS CONSTITUTE A MERGER OF THE PREDECESSOR TRADE UNION WITH THE APPLICANT TRADE UNION. THE APPLICANT THEREFORE SEEKS A DECLARATION UNDER SECTION 54 THAT IT IS THE BARGAINING AGENT FOR A BARGAINING UNIT OF THE EMPLOYEES OF THE EMPLOYER.

2. THE PREDECESSOR TRADE UNION WAS DISTRICT 50. THE EVIDENCE BEFORE THIS BOARD IS THAT AT THE CONSTITUTIONAL CONVENTION OF DISTRICT 50 HELD ON AUGUST 23, 24 AND 25, 1971, THE FOLLOWING AMENDMENT WAS PROPOSED TO THE CONSTITUTION OF DISTRICT 50:

"THE INTERNATIONAL EXECUTIVE BOARD OF THE INTERNATIONAL UNION OF DISTRICT 50, ALLIED AND TECHNICAL WORKERS OF THE UNITED STATES AND CANADA, TO BE ELECTED AT THE FOURTH CONSTITUTIONAL CONVENTION IS EXPRESSLY AUTHORIZED TO ADOPT A PLAN FOR HOLDING A REFERENDUM OF THE MEMBERSHIP ON THE QUESTION OF A MERGER BETWEEN THE INTERNATIONAL UNION OF DISTRICT 50, ALLIED AND TECHNICAL WORKERS OF THE UNITED STATES AND CANADA, AND THE UNITED STEELWORKERS OF AMERICA, AFL-CIO, AND A DISSOLUTION OF THE INTERNATIONAL UNION OF DISTRICT 50, ALLIED AND TECHNICAL WORKERS OF THE UNITED STATES AND CANADA. THE PLAN TO BE ADOPTED BY THE INTERNATIONAL EXECUTIVE BOARD OF THE INTERNATIONAL UNION OF DISTRICT 50, ALLIED AND TECHNICAL WORKERS OF THE UNITED STATES AND CANADA SHALL BE IMPLEMENTED AND THE REFERENDUM HELD ON CONDITION THAT THE PLAN AND ARRANGEMENTS FOR A REFERENDUM IS FIRST APPROVED BY THE UNITED STATES DISTRICT COURT, INCLUDING SUCH PROVISIONS AS THE COURT MAY DEEM APPROPRIATE FOR ASSURING A FREE AND INFORMED VOTE OF THE MEMBERSHIP OF THE INTERNATIONAL UNION OF DISTRICT 50, ALLIED AND TECHNICAL WORKERS OF THE UNITED STATES AND CANADA, NOT SUBJECT TO ANY UNDUE INFLUENCE."

THIS AMENDMENT WAS UNANIMOUSLY ADOPTED BY THE CONVENTION AS SECTION 12 OF ARTICLE XIX OF THE CONSTITUTION OF DISTRICT 50.

3. ALTHOUGH THIS AMENDMENT WAS PASSED UNANIMOUSLY BY THE CONVENTION, IT WAS NOT WITHOUT SOME CONTROVERSY THAT THIS PROPOSAL WAS ADOPTED. THE EVIDENCE BEFORE THE BOARD INDICATES THAT THERE HAD BEEN NEGOTIATIONS TO EFFECT A MERGER OF DISTRICT 50 AND THE STEELWORKERS FOR SOME TIME PRIOR

TO THE CONVENTION. BEFORE THE START OF THE CONVENTION IN AUGUST OF 1971, A PROPOSED MERGER AGREEMENT HAD BEEN ARRIVED AT BY THE EXECUTIVE OF THE PARENT UNIONS. HOWEVER, A DISSIDENT GROUP OF DISTRICT 50, HEADED BY ONE ANGELO CEFALO HAD OBTAINED AN INJUNCTION RESTRAINING THE PRESIDENT AND OTHERS OF DISTRICT 50 "FROM PRESENTING OR VOTING UPON OR EFFECTUATING ANY MERGER BETWEEN" THE STEELWORKERS AND DISTRICT 50. THAT ORDER WAS MADE BY UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA ON AUGUST 18, 1972. THIS ORDER WAS APPEALED AND ON AUGUST 23, 1971, THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA MODIFIED THE INJUNCTION ORDER TO PERMIT THE CONVENTION TO AUTHORIZE THE EXECUTIVE BOARD OF DISTRICT 50 TO ADOPT A PLAN FOR THE HOLDING OF A REFERENDUM OF THE MEMBERSHIP ON THE QUESTION OF A MERGER BETWEEN DISTRICT 50 AND THE STEELWORKERS. HOWEVER, THIS ORDER OF THE COURT OF APPEALS ALSO ORDERED THAT THE PROPOSED REFERENDUM PLAN HAD TO BE APPROVED BY THE DISTRICT COURT. SUCH APPROVAL WAS NOT ONLY TO ENSURE THAT A FREE AND INFORMED VOTE, NOT SUBJECT TO UNDUE INFLUENCE TAKE PLACE, BUT ALSO TO ENSURE THAT THE ALLEGED BREACHES OF TRUST UPON WHICH THE ORIGINAL INJUNCTION WAS GRANTED, WOULD BE AVOIDED.

4. AS A RESULT OF THE ORDER OF THE COURT OF APPEALS, THE MATTER OF THE REFERENDUM WAS PUT TO THE CONSTITUTIONAL CONVENTION OF DISTRICT 50 IN THE FORM OF AN AMENDMENT TO THE CONSTITUTION AND THE AMENDMENT SET OUT IN PARAGRAPH 2 ABOVE WAS PASSED UNANIMOUSLY BY THOSE PRESENT. BEFORE DEALING WITH THE PLAN THAT WAS ADOPTED IT IS PERHAPS DESIRABLE TO CONSIDER AT THIS JUNCTURE THE EFFECT OF SUCH AN AMENDMENT TO THE CONSTITUTION OF DISTRICT 50. COUNSEL FOR THE EMPLOYER SUGGESTED THAT THERE WERE DOUBTS ABOUT THE VALIDITY OF THE MERGER UNDER CONSIDERATION IN THE LIGHT OF THE DECISION OF THE ONTARIO COURT OF APPEAL IN ASTGEN ET AL. V. SMITH 7 D.L.R. (3d) 657 (1970). THAT DECISION UPHOLD THE DECISION OF KING, J. DECLARING THE MERGER BETWEEN THE INTERNATIONAL UNION OF MINE MILL & SMELTER WORKERS AND THE UNITED STEELWORKERS OF AMERICA INVALID. THE REASON FOR THE DECISION WAS THAT THE MERGER AGREEMENT WAS BEYOND THE POWER OF THE MINE, MILL UNION. THE COURT HELD THAT SINCE THE MERGER INVOLVED THE DISSOLUTION OF THE UNION, IN THE ABSENCE OF A SPECIFIC POWER TO DISSOLVE THE UNION, THE UNION COULD ONLY BE DISSOLVED ON THE UNANIMOUS CONSENT OF THE MEMBERS OF THE UNION. THE COURT SPECIFICALLY FOUND THAT THE POWER TO MERGE WITH ANOTHER ORGANIZATION WAS NOT AN INHERENT POWER OF A VOLUNTARY ASSOCIATION, SUCH AS A TRADE UNION. THUS UNLESS THE POWER TO MERGE IS SPECIFICALLY SET OUT IN THE CONSTITUTION OF AN ORGANIZATION, THAT ORGANIZATION CANNOT ENTER INTO A MERGER AGREEMENT WITHOUT THE UNANIMOUS CONSENT OF THE MEMBERS OF THAT ORGANIZATION. HOWEVER, IN REFUSING TO FIND THAT THE POWER TO MERGE WAS IN THE CONSTITUTION OF THE MINE WORKERS UNION, THE COURT MADE THE FOLLOWING STATEMENT:

"THERE IS AMPLE AUTHORITY FOR THE PROPOSITION THAT THE AUTHORITY OF THE MAJORITY TO AMEND THE CONSTITUTION COULD NOT ACCOMPLISH A CHANGE IN THE FUNDAMENTAL OBJECTS OF THE ASSOCIATION. THE POWER OF AMENDING THE CONSTITUTION MUST BE ALWAYS



INTERPRETED AS LIMITED TO THE VARIATION OF THE PROVISIONS OF THE CONSTITUTION IN SO FAR AS THEY ARE ANCILLARY TO THE ACCOMPLISHMENT OF THE OBJECTS. THE AGREEMENT OF A MEMBER THAT THE CONSTITUTION MAY BE AMENDED BY A MAJORITY VOTE CANNOT BE STRETCHED INTO AN AUTHORITY TO VARY THE OBJECTS AND PURPOSES OF THE ASSOCIATION."

THUS, IN THE PRESENT CASE IT WOULD BE BEYOND THE POWERS OF DISTRICT 50 TO AMEND IT CONSTITUTION IN SUCH A WAY AS TO DEFEAT THE OBJECTS OF THE UNION.

5. THE QUESTION WHICH THEN ARISES IS WHETHER THE AMENDMENT TO THE CONSTITUTION SET OUT IN PARAGRAPH 2 ABOVE IS SUCH A PROVISION THAT WOULD REQUIRE THE UNANIMOUS CONSENT OF ALL THE MEMBERS. UPON CLOSE EXAMINATION IT IS CLEAR THAT THE AMENDMENT IS NOT AN AMENDMENT TO MERGE OR TERMINATE THE EXISTENCE OF THE TRADE UNION. THE AMENDMENT MERELY SETS OUT AN AGREEMENT BETWEEN THE MEMBERS OF THE TRADE UNION TO ADOPT THE WISHES OF THE MAJORITY AS FOUND UNDER A RIGOROUSLY CONDUCTED VOTE AS TO WHETHER THERE SHOULD BE MERGER. IT WOULD BE LUDICROUS TO SUGGEST THAT AN AMENDMENT PROPOSING MAJORITY RULE ON AN ISSUE IS OUTSIDE THE POWER OR THE OBJECTS AS SET OUT IN ARTICLE 3 OF THE CONSTITUTION OF DISTRICT 50. IN FACT, SUCH AN AMENDMENT CANNOT BE REGARDED AS A FUNDAMENTAL CHANGE IN THE RELATIONSHIP OF THE MEMBERS OF THE UNION INTER SE, BUT RATHER, A REITERATION THAT THE RELATIONSHIP BETWEEN THE MEMBERS IS TO BE A DEMOCRATIC ONE. THUS, IT IS CLEAR THAT THE AMENDMENT IS ONE WHICH IS WITHIN THE POWER OF THE ASSOCIATION TO MAKE AND THEREFORE NOT ONE OF THE TYPE WHICH WOULD REQUIRE THE UNANIMOUS CONSENT OF ALL THE MEMBERS OF THE TRADE UNION. THIS BEING THE CASE WE ARE OF THE VIEW THAT THE ASTGEN V. SMITH CASE REFERRED TO DOES NOT IN THIS INSTANCE PROSCRIBE THE ISSUANCE OF A DECLARATION UNDER SECTION 54 OF THE ACT.

6. FOLLOWING THE AMENDMENT TO THE CONSTITUTION OF DISTRICT 50 IT WAS NECESSARY FOR THE PLAN TO IMPLEMENT THE PROPOSED REFERENDUM TO BE APPROVED BY THE DISTRICT COURT. BEFORE THIS WAS DONE THE COURT OF APPEALS ISSUED AN AMPLIFIED OPINION CONCERNING ITS REVERSAL OF THE DISTRICT COURT'S ORIGINAL INJUNCTIVE ORDER. THIS DECISION MAKES IT CLEAR THAT THE OFFICE OF THE SECRETARY OF LABOUR WAS TO BE USED BY THE DISTRICT COURT IN THE PLANNING OF THE PROPOSED REFERENDUM AND THE ACTUAL TAKING OF THE PROPOSED VOTE.

7. AFTER HEARING ARGUMENT AND OBJECTIONS TO PROPOSED PLANS FOR THE REFERENDUM, THE DISTRICT COURT ENTERED AN ORDER ON APRIL 14, 1972, DIRECTING THE TAKING OF A REFERENDUM VOTE. THAT ORDER SETS OUT IN EXTENSIVE DETAIL THE MANNER IN WHICH THE VOTE WAS TO BE CONDUCTED. THE VOTE WAS TO BE CONDUCTED BY MERKLE PRESS INC. UNDER THE SUPERVISION AND DIRECTION OF THE SECRETARY OF LABOUR. INCLUDED IN THE ORDER OF THE COURT WERE THE FOLLOWING PROVISIONS:

- (A) DETAILED INSTRUCTIONS AS TO THE NOTICE OF THE VOTE TO BE GIVEN THE MEMBERS AND OF THE PROCEDURES SURROUNDING THE VOTE;
- (B) DETAILS AS TO HOW THE VOTE WAS TO BE CONDUCTED BY MAIL;
- (C) EXTENSIVE RULES GOVERNING THE VOTING, FOR EXAMPLE, RULES RESPECTING ELIGIBILITY, CUT-OFF DATES AND VARIOUS DEADLINES FOR THE COUNTING OF BALLOTS;
- (D) THE ARRANGEMENTS FOR THE CARE AND CONTROL OF THE BALLOTS AND THE COUNTING OF THE BALLOTS BY THE MERKLE PRESS INC.;
- (E) DIRECTIONS TO THE SECRETARY OF LABOUR TO SET THE RULES GOVERNING THE PRE-VOTE CAMPAIGN ACTIVITIES OF THE MEMBERS OF DISTRICT 50, AND ALSO DIRECTING THE SECRETARY OF LABOUR TO RECEIVE AND INVESTIGATE ANY COMPLAINTS OR PROTESTS CONCERNING THE CONDUCT OF THE REFERENDUM VOTE.

8. SHORTLY AFTER THE ORDER OF THE COURT DIRECTING THE VOTE, THE SECRETARY OF LABOUR SET OUT STRINGENT CAMPAIGN RULES TO ENSURE THAT CAMPAIGNING IN THE REFERENDUM WAS CONDUCTED ONLY BY INDIVIDUAL MEMBERS. THUS, THE USE OF UNION FUNDS IN ANY CAMPAIGNING WAS STRICTLY PROHIBITED. THE SECRETARY OF LABOUR ALSO SET OUT VERY DETAILED RULES TO ENSURE THAT BOTH FACTIONS IN DISTRICT 50 WERE GIVEN EQUAL TREATMENT WITH RESPECT TO THEIR CAMPAIGNS AND EQUAL OPPORTUNITY TO MAKE THEIR VIEWS KNOWN. IN THIS REGARD SEVERE RESTRICTIONS WERE PLACED ON THE USE OF LISTS OF THE MEMBERSHIP OF DISTRICT 50 AND ON LISTS OF LOCAL OFFICERS. THE CONCERN OF THE SECRETARY OF LABOUR IN THIS REGARD WAS A MATTER OF FOLLOWING THE DIRECTION OF THE COURT OF APPEALS, THAT THE VOTE BE A FREE AND INFORMED VOTE, BUT ALSO CONSIDERING THE ALLEGATIONS OF THOSE AGAINST THE MERGER THAT THE OFFICERS OF DISTRICT 50 STOOD TO BENEFIT FROM THE PROPOSED MERGER WITH THE STEELWORKERS.

9. AS A RESULT OF THE DISTRICT COURT'S ORDER CONCERNING THE REFERENDUM A SPECIAL EDITION OF "DISTRICT 50 NEWS" WAS SENT TO ALL MEMBERS OF DISTRICT 50. THE GOAL OF THIS EDITION WAS TO PROVIDE THE BACKGROUND INFORMATION NECESSARY FOR THE INDIVIDUAL MEMBERS OF DISTRICT 50 TO MAKE AN INTELLIGENT CHOICE IN THE REFERENDUM ON THE PROPOSED MERGER. THIS SPECIAL EDITION OF DISTRICT 50 NEWS SET OUT THE NOTICE OF THE REFERENDUM IN FULL TOGETHER WITH THE COURT ORDER REGARDING THE REFERENDUM. THIS EDITION ALSO INCLUDED BALLOTING INSTRUCTIONS, A SAMPLE BALLOT AND INSTRUCTIONS ABOUT WHAT MEMBERS WERE TO DO IF THEY DID NOT RECEIVE A BALLOT

BY MAIL, TOGETHER WITH INSTRUCTIONS IN THE EVENT OF A CHANGE OF ADDRESS. ALSO INCLUDED IN THE SPECIAL EDITION WAS THE COMPLETE TEXT OF THE PROPOSED MERGER AGREEMENT WITH THE STEELWORKERS AND THE COMPLETE CONSTITUTION OF THE STEELWORKERS UNION. THIS ISSUE WAS ALSO PRINTED IN FRENCH AND THE CANADIAN MEMBERS OF DISTRICT 50 WERE SENT BOTH THE ENGLISH AND THE FRENCH EDITIONS OF THIS PAPER.

10. IN THE SPECIAL EDITION OF DISTRICT 50 NEWS NO CAMPAIGNING WITH RESPECT TO THE REFERENDUM ON THE PROPOSED MERGER WAS ALLOWED. HOWEVER, AT THE SAME TIME AS THE SPECIAL EDITION WAS SENT OUT AN EXTRA EDITION OF DISTRICT 50 NEWS WAS SENT OUT. THIS EDITION WAS EQUALLY DIVIDED TO ALLOW BOTH FACTIONS OF DISTRICT 50 TO EXPRESS THEIR VIEWS OF THE MERGER IN DETAIL. THIS EDITION LIKE THE SPECIAL EDITION WAS ALSO PRINTED IN FRENCH AND ENGLISH AND COPIES OF BOTH EDITIONS WERE SENT TO THE CANADIAN MEMBERS OF DISTRICT 50.

11. IN ADDITION TO THE NOTICES SENT TO EACH INDIVIDUAL MEMBER OF DISTRICT 50 EACH LOCAL WAS SENT A NOTICE WHICH WAS TO BE POSTED IN THE PLACE WHERE NOTICES ARE CUSTOMARILY POSTED FOR THE MEMBERS OF THE LOCAL. THIS NOTICE SET OUT DETAILS OF THE VOTE AND INSTRUCTIONS TO MEMBERS WHO MIGHT FAIL TO GET A BALLOT IN THE MAIL.

12. THE ACTUAL VOTE COMMENCED ON MAY 15, 1972, WHEN THE BALLOTS WERE SENT OUT TO THE MEMBERS OF DISTRICT 50. EACH MEMBER WAS SENT A FORMAL NOTICE OF THE REFERENDUM, A BALLOT AND AN UNMARKED ENVELOPE IN WHICH THE SECRET BALLOT WAS TO BE PLACED FOR RETURN IN A SECOND ADDRESSED ENVELOPE. THIS PROCEDURE ENSURED THE SECRECY OF THE BALLOT EVEN THOUGH THE BALLOTING WAS DONE BY MAIL SINCE THE UNMARKED ENVELOPES WERE NOT CAPABLE OF IDENTIFICATION. IN ACCORDANCE WITH THE COURT ORDER THESE BALLOTS IN THEIR DOUBLE ENVELOPES WERE SENT TO A POST OFFICE BOX RESERVED SPECIFICALLY FOR THE VOTE. THE BALLOTS WERE COLLECTED UNDER SUPERVISION AND COUNTING OF THE BALLOTS COMMENCED ON JUNE 5, 1972 AND ENDED ON JUNE 9, 1972. THROUGHOUT THE VOTING PROCEDURE OFFICERS OF THE DEPARTMENT OF LABOUR WERE PRESENT TO ENSURE THE PROPRIETY OF THE PROCEEDINGS.

13. AFTER THE VOTE WAS COMPLETED THE SECRETARY OF LABOUR REPORTED TO THE DISTRICT COURT ON THE RESULTS OF THE REFERENDUM. THE REPORT WAS THAT THE ELECTION HAD BEEN COMPLETED AND THE VOTES COUNTED WITH THE RESULT THAT A MAJORITY OF THE MEMBERS VOTING HAD APPROVED THE MERGER. APPENDED TO THIS REPORT TO THE DISTRICT COURT WAS A 10 PAGE REPORT DEALING IN DETAIL WITH ALL THE PROTESTS MADE CONCERNING THE TAKING OF THE VOTE. EACH ALLEGED IRREGULARITY HAD BEEN INVESTIGATED BY OFFICERS OF THE DEPARTMENT OF LABOUR. A NUMBER WERE FOUND NOT TO BE SUBSTANTIATED AND THOSE THAT WERE SUBSTANTIATED WERE FOUND NOT TO AFFECT THE OUTCOME OF THE VOTE. ON THE BASIS OF THIS REPORT BY THE SECRETARY OF LABOUR THE COURT ON AUGUST 8, 1972, ORDERED ITS ORIGINAL INJUNCTION DISSOLVED AND AUTHORIZED DISTRICT 50 TO PROCEED WITH THE MERGER WITH THE STEELWORKERS.



14. THE RESULTS OF THE ACTUAL REFERENDUM ARE SET OUT IN DETAIL IN THE REPORT OF THE SECRETARY OF LABOUR TO THE DISTRICT COURT. IN ALL, ONE HUNDRED AND SIXTY-EIGHT THOUSAND AND FIFTY-ONE (168,051) BALLOTS WERE MAILED OUT TO THE MEMBERS OF DISTRICT 50. THE TOTAL NUMBER OF VOTES CAST AND COUNTED WAS SIXTY-FOUR THOUSAND AND TWENTY-TWO (64,022). OF THESE BALLOTS CAST THIRTY-SEVEN THOUSAND, TWO HUNDRED AND EIGHT-NINE (37,289) VOTED IN FAVOUR OF THE PROPOSED MERGER AND TWENTY-SIX THOUSAND, SEVEN HUNDRED AND THIRTY-THREE (26,733) VOTED AGAINST THE PROPOSED MERGER. THE REPORT ON THE VOTE ALSO GIVES THE DETAILS OF THE VOTE BY THE CANADIAN MEMBERS OF DISTRICT 50. WITH RESPECT TO THE CANADIAN VOTE, ONE THOUSAND, SEVEN HUNDRED AND TWENTY-ONE (1,721) VOTED IN FAVOUR OF THE PROPOSED MERGER, WHILE EIGHT HUNDRED AND THIRTY-SIX (836) VOTED AGAINST THE PROPOSED MERGER. THE CANADIAN MEMBERSHIP OF DISTRICT 50 WAS DIVIDED INTO THREE REGIONS AND THE REPORT GIVES THE BREAKDOWN OF THE VOTE WITH RESPECT TO EACH OF THESE REGIONS. THAT VOTE WAS AS FOLLOWS:

	<u>FOR</u>	<u>AGAINST</u>
REGION 75	<u>934</u>	<u>328</u>
REGION 76	557	435
REGION 77	230	73

REGION 75 COVERS MOST OF THE PROVINCE OF ONTARIO, WHILE REGION 76 COVERS A PORTION OF THE PROVINCE OF ONTARIO AND THE PROVINCE OF QUEBEC.

15. WE NOW TURN TO DEAL WITH ONE OF THE SUGGESTIONS BY COUNSEL FOR THE EMPLOYER THAT THE RESULTS OF THE VOTE, IN ORDER TO BE ACCEPTED BY THIS BOARD, SHOULD HAVE BEEN BROKEN DOWN TO INDICATE THE WAY THE MEMBERS IN EACH BARGAINING UNIT VOTED. THE BOARD'S POLICY WITH RESPECT TO SECTION 54 OF THE LABOUR RELATIONS ACT HAS BEEN TO REQUIRE AN APPLICANT TO SATISFY THE BOARD THAT A MAJORITY OF THE MEMBERS OF THE PREDECESSOR TRADE UNION HAVE SIGNIFIED THEIR APPROVAL OF THE TRANSFER OF JURISDICTION, AMALGAMATION OR MERGER AS THE CASE MAY BE. IN THE PRESENT CASE THERE IS NO DOUBT THAT A PROPER VOTE AMONGST THE MEMBERS OF DISTRICT 50 HAS BEEN CONDUCTED. CERTAINLY, THE ACT DOES NOT REQUIRE THAT A VOTE BE TAKEN IN EACH BARGAINING UNIT, AND THERE APPEARS TO BE NO CASE IN WHICH THE BOARD HAS REQUIRED THAT THE RESULTS OF A VOTE OF A MERGER BE ENUNCIATED IN THAT GREAT A DETAIL. IN THE PRESENT CASE THE FACT THAT A MAJORITY OF THOSE WHO VOTED IN THE REFERENDUM FAVOURED THE MERGER CANNOT BE DISPUTED, AND THAT MAJORITY INVOLVES THE TOTAL MEMBERSHIP OF DISTRICT 50, AND WE CAN SEE NO NECESSITY TO REQUIRE A FURTHER VOTE WITH RESPECT TO THE MEMBERS IN EACH PARTICULAR BARGAINING UNIT.

16. THE DISSOLUTION OF THE INJUNCTION BY THE DISTRICT COURT MEANT THAT THE PROPOSED MERGER AGREEMENT COULD BE EXECUTED. THE STEELWORKERS HAD BY ITS EXECUTIVE BOARD ALREADY APPROVED THE MERGER AND THE MERGER AGREEMENT ITSELF HAD BEEN DRAFTED. THE AGREEMENT WAS MADE TO COME INTO EFFECT ON AUGUST 9, 1972, THE DAY AFTER THE DISSOLUTION OF THE INJUNCTION. THE AGREEMENT IS PRIMARILY THAT DISTRICT 50 AND ITS LOCAL UNIONS

ARE MERGED WITH THE STEELWORKERS. THE MERGER AGREEMENT SPELLS OUT IN DETAIL THE VARIOUS ARRANGEMENTS BY WHICH DISTRICT 50 AND ITS LOCALS ARE TO BE ABSORBED INTO AND MADE PART OF THE STEELWORKERS UNION. WE NEED NOT GO INTO THESE DETAILS HERE SINCE THE MERGER IS NOT CONTINGENT UPON THE COMPLETION OF ANY OF THESE DETAILED ADMINISTRATIVE ARRANGEMENTS.

17. THE RESPONDENT IN THIS CASE IS PARTY TO A COLLECTIVE AGREEMENT WITH DISTRICT 50 ON BEHALF OF LOCAL 14074 DATED DECEMBER 30, 1971, AND IN FORCE UP TO AND INCLUDING NOVEMBER 15, 1973. THE BARGAINING UNIT DEFINED IN THIS COLLECTIVE AGREEMENT IS SET OUT IN THE FOLLOWING PROVISIONS OF ARTICLE I:

#### ARTICLE I

##### (A) IN THIS AGREEMENT

- (1) "COMPANY" MEANS THE CORPORATION CANADIAN INDUSTRIES LIMITED, AS A WHOLE.
- (II) "SAID WORKS" MEANS THE AGRICULTURAL CHEMICALS AND FEED PLANT LOCATED AT INGERSOLL, ONTARIO, OPERATED BY THE COMPANY.
- (III) "EMPLOYEE" MEANS ANYONE EMPLOYED AT THE SAID WORKS SAVE AND EXCEPT FOREMEN, THOSE ABOVE THE RANK OF FOREMEN, OFFICE STAFF, SALESMEN AND LABORATORY STAFF.
- (IV) "BARGAINING UNIT" MEANS THE UNIT OF EMPLOYEES AS HEREIN DEFINED.

##### (B) THIS AGREEMENT COVERS ALL EMPLOYEES AS HEREIN DEFINED.

18. IN ACCORDANCE WITH THE BOARD'S RULES OF PROCEDURE, THE EMPLOYEES AFFECTED BY THIS APPLICATION HAVE RECEIVED NOTICE OF THIS APPLICATION BY A POSTING AT THEIR PLACE OF EMPLOYMENT IN FORM 20. NO REPRESENTATIONS OR OBJECTIONS TO THIS APPLICATION WERE FILED WITH THE BOARD BY ANY OF THE EMPLOYEES AFFECTED BY THE APPLICATION.

19. IN ACCORDANCE WITH ALL OF THE ABOVE CONSIDERATIONS THE BOARD FINDS AND ACCORDINGLY DECLARES PURSUANT TO SECTION 54(1) OF THE LABOUR RELATIONS ACT, THAT THE APPLICANT HAS BY REASON OF A MERGER WITH THE PREDECESSOR TRADE UNION, ACQUIRED THE RIGHTS, PRIVILEGES AND DUTIES OF THE PREDECESSOR TRADE UNION, WHICH WAS THE BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF THE RESPONDENT DEFINED IN A COLLECTIVE AGREEMENT DATED DECEMBER 30, 1971, BETWEEN THE RESPONDENT AND THE PREDECESSOR TRADE UNION.

1624-71-U: NORTH SIMCOE ELECTRICAL CONTRACTING LIMITED (APPLICANT) V. THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL 894, AND DOUGLAS SHEARER, WILLIAM CLARKSON, THOMAS SHAUGHNESSY, DAVID BROWN, HARLAND KELLY, AND GRENVILLE MENZIES (RESPONDENTS).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F.W. MURRAY.

APPEARANCES AT THE HEARING: MICHAEL GORDON FOR THE APPLICANT; RAYMOND KOSKIE AND D. LOUNDS FOR THE RESPONDENTS.

DECISION OF O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBER E. BOYER:  
JUNE 13, 1973.

1. THIS IS AN APPLICATION TO THE ONTARIO LABOUR RELATIONS BOARD FOR RELIEF UNDER SECTION 123(1) OF THE ACT, WHICH GENERALLY, GIVES THE BOARD POWER TO ISSUE DIRECTIONS IN CONNECTION WITH ACTIVITY DIRECTED TO OR INVOLVING UNLAWFUL STRIKES. THE SECTION IS PART OF THE CONSTRUCTION INDUSTRY PROVISIONS OF THE ACT.
2. AT THE OUTSET OF THE PROCEEDINGS A REPRESENTATIVE OF THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (HEREINAFTER REFERRED TO AS "CLAC") APPEARED AND ASKED FOR STATUS TO APPEAR IN THE HEARINGS. BASED ON THE REPRESENTATIONS MADE WE DETERMINED THAT CLAC MIGHT HAVE BEEN AFFECTED BY THE EVENTS THAT TRANSPIRED AND THEREFORE HAD AN INTEREST IN ANY DECISION THAT WE MIGHT MAKE. ACCORDINGLY WE GRANTED CLAC STATUS.
3. THE FACTS DEMONSTRATE THAT THE APPLICANT HAD A VALID AND EXISTING COLLECTIVE AGREEMENT WITH CLAC, AND THAT ON FEBRUARY 14TH, 15TH AND 16TH 1972, THE APPLICANT WAS WORKING AS A SUBCONTRACTOR ON A CONSTRUCTION PROJECT AT THE BRAZLY DRIVE CAMPUS AT SIR SANDFORD FLEMING COLLEGE IN PETERBOROUGH. ON THOSE DATES PICKETS APPEARED CARRYING SIGNS AND CERTAIN OF THOSE PERSONS WERE IDENTIFIED AS BEING MEMBERS OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (HEREINAFTER REFERRED TO AS THE "IBEW"). THERE WERE TWO SIGNS - ONE SAID "ELECTRICIANS ON THE PROJECT ARE NOT BEING PAID IBEW RATES", AND THE OTHER SAID "ELECTRICIANS ON THE PROJECT ARE NOT PETERBORO RESIDENTS".
4. THE PICKETING DID NOT DETER ANY OF THE EMPLOYEES OF THE APPLICANT FROM COMING TO WORK. THE EVIDENCE ALSO INDICATED THAT THE PICKET LINE WAS ORDERLY; THAT THERE WAS NO VIOLENCE AND THAT THERE WAS NO ATTEMPT TO STOP PERSONS FROM CROSSING THE LINE. THE ONLY DIRECT EVIDENCE THAT OTHER TRADES OR EMPLOYEES OF OTHER CONTRACTORS DID NOT CROSS THE PICKET LINES IS THE EVIDENCE OF DONALD CANN, FOREMAN OF EMERALD ERECTORS LTD. HE TESTIFIED THAT HIS MEN DID NOT CROSS THE PICKET LINE ON MONDAY FEBRUARY 14TH, BUT THAT THEY ALL RETURNED AND WORKED ON TUESDAY AND ON WEDNESDAY NOTWITHSTANDING THE PICKET LINE. OTHER EVIDENCE SUGGESTS THAT ALL THE TRADES WERE WORKING ON WEDNESDAY EVEN THOUGH THERE WAS A PICKET LINE PRESENT. ON MONDAY, THE JOB HAD SHUT DOWN EARLY IN THE MORNING BECAUSE OF THE WEATHER SO THAT IF THERE WAS ANY HARM CAUSED



BY THE PICKET LINE IT ONLY OCCURRED FOR ABOUT ONE TO TWO HOURS THAT DAY. THE EVIDENCE ALSO INDICATES THAT ALL THE TRADES WERE WORKING ON TUESDAY MORNING AT APPROXIMATELY 9:00 A.M., SO THAT ANY HARM FROM PICKET LINES ON THAT DAY WAS ALSO SHORT LIVED.

5. MR. DONALD LOUNDS, THE BUSINESS AGENT FOR LOCAL 894 OF THE IBEW, TESTIFIED THAT THE PURPOSE OF THE PICKET LINE WAS TO CONVEY INFORMATION TO THE PUBLIC AND TO PERSONS WORKING ON THE SITE. HE TESTIFIED THAT HE INSTRUCTED THE PICKETS NOT TO OBSTRUCT TRAFFIC AND NOT TO STOP PEOPLE GOING TO WORK.

6. IN APPLYING SECTION 123 THERE ARE A NUMBER OF PRELIMINARY OBSERVATIONS THAT SHOULD BE MADE. FIRST, IT HAS BEEN SUGGESTED THAT THERE ARE LIMITS IMPOSED ON THE EXERCISE OF OUR POWERS BY VIRTUE OF SECTION 96 OF THE BRITISH NORTH AMERICA ACT AND THE EFFECT OF THAT SECTION ON AN ADMINISTRATIVE TRIBUNAL PREVENTS IT FROM EXERCISING JUDICIAL POWERS. HOWEVER, THE DECISION OF THE PRIVY COUNCIL IN LABOUR RELATIONS BOARD OF SASKATCHEWAN V. JOHN EAST IRON WORKS LTD. [1949] A.C. 134 CLEARED THE WAY FOR LABOUR RELATIONS BOARDS TO EXERCISE POWERS IN WHAT THE PRIVY COUNCIL REFERRED TO AS THE "NEW CONCEPTION OF INDUSTRIAL RELATIONS". OUR DECISIONS THEREFORE MUST BE FOUNDED ON A CONCEPT OF INDUSTRIAL RELATIONS WHICH HAS, AT LEAST, AGED TWENTY-FOUR YEARS SINCE THE DECISION IN JOHN EAST IRON WORKS LTD.

7. A SECOND CONSIDERATION IS SECTION 17 OF THE JUDICATURE ACT R.S.O. 1970 c. 97. THAT SECTION IS INTENDED TO PROVIDE A MEANS WHEREBY INJUNCTIONS MAY BE GRANTED BY COURTS IN "LABOUR DISPUTES". LABOUR DISPUTE IS DEFINED BY SECTION 17(1) AS A "DISPUTE OR DIFFERENCE CONCERNING TERMS, TENURE OR CONDITIONS OF EMPLOYMENT OR CONCERNING THE ASSOCIATION OR REPRESENTATION OF PERSONS IN NEGOTIATING, FIXING, MAINTAINING, CHANGING OR SEEKING TO ARRANGE TERMS OR CONDITIONS OF EMPLOYMENT, REGARDLESS OF WHETHER THE DISPUTANTS STAND IN THE PROXIMATE RELATION OF EMPLOYER AND EMPLOYEE." THE LIMITS OF THE INJUNCTION PROCEDURE ARE CONTAINED IN SECTION 17(3) OF THE JUDICATURE ACT WHICH REQUIRES THE COURT TO BE SATISFIED "THAT REASONABLE EFFORTS TO OBTAIN POLICE ASSISTANCE, PROTECTION AND ACTION TO PREVENT OR REMOVE ANY ALLEGED DANGER OF DAMAGE TO PROPERTY, INJURY TO PERSONS, OBSTRUCTION OF OR INTERFERENCE WITH LAWFUL ENTRY UPON OR EXIST FROM THE PREMISES IN QUESTION, OR BREACH OF THE PEACE. SECTION 17(7)(B) OF THE JUDICATURE ACT EXTENDS THE POWER OF THE COURTS TO GRANT INTERIM INJUNCTIONS IN CERTAIN SITUATIONS WHERE THERE IS "IRREPARABLE DAMAGE OR INJURY, A BREACH OF THE PEACE OR AN INTERRUPTION IN AN ESSENTIAL PUBLIC SERVICE."

8. THE JUDICATURE ACT AND THE RELIEF GRANTED UNDER IT BY THE COURTS SECURES PERSONS AND PROPERTY FROM DAMAGE, AND THAT ACT IS OPERATIVE IN WHAT HAS BEEN TRADITIONALLY KNOWN TO THE LAW AS THE AREA OF TORTS AND CRIMINAL LAW. THUS, THE RELIEF GRANTED BY THE LABOUR RELATIONS ACT IN THE AREA OF INDUSTRIAL RELATIONS, WHICH IN THE MAIN IS DIRECTED TO INDUSTRIAL PEACE, DIFFERS FROM THE RELIEF UNDER THE JUDICATURE ACT. HOWEVER, THE SECURING OF INDUSTRIAL PEACE MAY CONSIDER SECURITY FROM DAMAGE FOR PERSONS AND PROPERTY AND THEREFORE MAY TOUCH UPON THOSE AREAS COVERED BY THE JUDICATURE ACT.

9. ALSO, WE RECOGNIZE THAT A SIMPLE ADOPTION OR A WHOLESALE TRANSPLANT OF THE CASE LAW AND METHODS WHICH HAVE BEEN HITHERTO UTILIZED BY THE COURTS MAY LEAD TO THE ACCUSATION THAT THIS BOARD IS REALLY EXERCISING A POWER OR AUTHORITY TO WHICH IT IS NOT ENTITLED. ACCORDINGLY, WHERE IT IS OTHERWISE NOT EXPRESSED IT IS INTENDED AND IT SHOULD BE IMPLICIT IN OUR DECISIONS THAT WE ARE DECIDING ISSUES IN FURTHERANCE OF AN INDUSTRIAL RELATIONS POLICY.

10. THIRDLY, WE DO NOT PROPOSE A WHOLESALE ADOPTION OF THE TECHNIQUES AND REASONING EXERCISED BY THE COURTS IN RESOLVING TORT OR CRIMINAL PROBLEMS THAT ARISE IN LABOUR SITUATIONS. TRADITIONAL REASONING BASED AND FOUNDED IN A PRE-COLLECTIVE BARGAINING ERA, IN OUR VIEW, IS UNWIELDY IN BALANCING THE BROAD RANGE OF COMPLEX INTERESTS NECESSARY TO EFFECTUATE A VIABLE AND REALISTIC LABOUR RELATIONS POLICY; SEE GENERALLY, ARTHURS: TORT LIABILITY FOR STRIKES IN CANADA [1960] 38 CAN. BAR REV. 346; WEILER: THE 'SLIPPERY SLOPE' OF JUDICIAL INTERVENTION [1971] OSGOODE HALL LAW JOURNAL; BICKEL AND WELLINGTON: LEGISLATION PURPOSE AND THE JUDICIAL PROCESS [1957-58] 71 HARV. L. REV. 1 AT 24-25. IN SO SAYING WE DO NOT REJECT THE INTERESTS WHICH HAVE BEEN PROTECTED BY THE COURTS, BUT RATHER WE VIEW THOSE INTERESTS AS BEING A PART OF A LARGER SPECTRUM OF INTERESTS WORTHY OF PROTECTION IN DEVELOPING A POLICY OF LABOUR RELATIONS. NOR DO WE REJECT THE RESULT ARRIVED AT BY THE COURTS IN MANY OF THE CASES THAT HAVE COME BEFORE THEM - THIS BOARD MAY ALSO ARRIVE AT THE SAME RESULT NOTWITHSTANDING THAT BOTH OUR STARTING POINT AND OUR FOCUS ARE DIFFERENT.

11. LASTLY, WE MUST BE CAREFUL IN DISTINGUISHING THOSE CASES WHICH HAVE ARISEN IN THE UNITED STATES AND WHICH DERIVE FROM A DIFFERENT CONSTITUTIONAL BASE AND WHICH ALSO MAY ARISE UNDER A STATUTORY CODE; SEE E.G. THE LANDRUM AND GRIFFIN AMENDMENTS TO THE NATIONAL LABOUR RELATIONS ACT 41 MINN. L. REV. 257. THE ABSENCE OF A STATUTORY CODIFICATION SETTING OUT THE BASIS FOR GRANTING CEASE AND DESIST ORDERS MAKES OUR ROLE IN APPLYING SECTION 123 A HIGHLY CREATIVE ONE. THEREFORE IN BALANCING THE VARIOUS INTERESTS OF MANAGEMENT, UNIONS, EMPLOYEES, AND THE PUBLIC AND IN DECIDING WHICH TACTICS SHOULD BE PROHIBITED AND WHICH SHOULD BE PERMITTED REQUIRES A FLEXIBLE AND PRAGMATIC APPROACH TO THE ISSUES WHICH HAVE BEEN RAISED, AND WHICH WILL BE RAISED BEFORE THIS BOARD. WE RECOGNIZE THAT TO RESTRICT OR PERMIT THE OBJECTIVES OR THE FORMS OF ECONOMIC PRESSURE MAY TIP THE SCALES TOWARDS MANAGEMENT OR THE UNION IN ANY PARTICULAR SITUATION. IT IS THEREFORE NECESSARY THAT OUR EARLIER DECISIONS AT THE VERY LEAST SHOULD NOT BE TO DOCTRINAIRE, AND TO A GREAT EXTENT EACH CASE SHOULD DEPEND UPON ITS OWN PARTICULAR FACTS. PRINCIPLES, IF ANY, ARE TO BE EVOLVED OVER A LONG PERIOD ON A CASE BY CASE ANALYSIS. INITIALLY, THEREFORE, WE SHOULD HESITATE TO PAINT A WIDE BRUSH OR PRONOUNCE UNDULY ON MATTERS AS THEY ARISE. SUCH CAUTION MUST NOT BE MISINTERPRETED - IT IS ONLY A RECOGNITION OF THE GRAVE RESPONSIBILITY GRANTED TO US AND A RECOGNITION OF THE DIFFICULTIES IN MAINTAINING A BALANCE AMONG THE INTERESTS WHICH COMPETE FOR OUR DECISION.

12. WE NOW APPLY THESE CONSIDERATIONS TO THE FACTS OF THE INSTANT CASE. BASED ON THE EVIDENCE IT IS APPARENT IN THIS PARTICULAR SITUATION

THE APPLICANT HAS NOT SUFFERED ANY HARM. THERE IS NO INDICATION THAT ITS EMPLOYEES HAVE REFUSED TO COME TO WORK AND THERE IS NO INDICATION THAT THE PICKETS HAVE RESULTED IN ECONOMIC PRESSURE BEING BROUGHT TO BEAR ON THE APPLICANT WHICH IS HARMFUL TO ITS INTERESTS. CLAC HAS NOT DEMONSTRATED THAT EITHER IT, AS A UNION, OR ANY OF THE EMPLOYEES THAT IT REPRESENTS HAVE SUFFERED ANY PARTICULAR ECONOMIC HARM. OTHER PERSONS OR CONTRACTORS ON THE PROJECT HAVE NOT APPEARED AS INTERESTED PERSONS SEEKING RELIEF AND THEY DO NOT COMPLAIN ABOUT THE ACTIVITY. IT MAY VERY WELL BE THAT THEY HAVE TAKEN OTHER PROCEEDINGS IF THEY HAVE BEEN ADVERSELY AFFECTED OR ALTERNATIVELY THEY MAY NOT HAVE BEEN AFFECTED - BUT IN VIEW OF THE NATURE OF THE EVIDENCE WE ARE NOT PREPARED TO SPECULATE AS TO THEIR POSITION.

13. INSOFAR AS THE ACTIVITY OF THE TRADE UNION AND ITS MEMBERS IS CONCERNED IT IS BEING DONE PEACEFULLY AND WITHOUT VIOLENCE, AND IF ANY HARM WAS CAUSED IT APPEARS TO HAVE ABATED ON THE TUESDAY. BY WEDNESDAY THE ACTIVITY OF THE TRADE UNION WAS OBVIOUSLY RESULTING IN NO HARM WHATSOEVER TO ANY PERSON. THE FACT OF THE MATTER IS THAT PERSONS WHO MAY HAVE BEEN MEMBERS OF OTHER TRADE UNIONS WERE CROSSING PICKET LINES WHICH BELIES A VIEW HELD BY MANY PERSONS THAT MEMBERS OF TRADE UNIONS WILL NOT CROSS PICKET LINES. WHEN THIS APPLICATION WAS MADE ALL THE PICKETING HAD CEASED. FURTHER, THERE WAS NO EXISTING UNLAWFUL STRIKE NOR IN VIEW OF THE RETURN TO WORK OF THE EMPLOYEES ON THE PROJECT ARE WE CONVINCED THAT THERE IS THE THREAT OF AN UNLAWFUL STRIKE WITHIN THE MEANING OF SECTION 123.

14. THERE WAS ALSO SOME REFERENCE IN THE EVIDENCE RESPECTING A PICKETING INCIDENT WHICH HAD OCCURRED APPROXIMATELY ONE YEAR PRIOR TO THE ACTS COMPLAINED ABOUT. THAT FACT WAS NOT ALLEGED AS A MATERIAL FACT UPON WHICH THE APPLICANT RELIED NOR IS IT REFERRED TO IN ORDER TO BUTTRESS THE APPLICANT'S POSITION IN THE EXTENSIVE WRITTEN ARGUMENT FILED BY THE APPLICANT. FURTHER, THE EVIDENCE WITH RESPECT TO THAT POINT IS MEAGRE. WHILE A WITNESS INDICATED THAT ON ANOTHER PROJECT HE SAW PICKET SIGNS WHICH REFERRED TO THE IBEW THERE IS NOTHING TO INDICATE THAT THE PICKETING RESULTED IN AN UNLAWFUL STRIKE NOR IS THERE ANY EVIDENCE TO IDENTIFY THE PICKETS WITH THE RESPONDENT LOCAL IN THIS CASE. IN VIEW OF ALL THESE FACTORS WE ARE NOT PREPARED TO GIVE ANY WEIGHT TO THAT INCIDENT IN ARRIVING AT OUR DECISION.

15. IN CONCLUSION, AFTER WEIGHING ALL THESE ISSUES AND AFTER CONSIDERING THE VARIOUS COMPETING INTERESTS INVOLVED, WE ARE NOT PREPARED TO GRANT A CEASE AND DESIST ORDER BASED ON THE FACTS OF THIS CASE. THE COMPLAINT IS THEREFORE DISMISSED.

1. I DISSENT.

2. SECTION 123 OF THE ONTARIO LABOUR RELATIONS ACT READS AS FOLLOWS:

"(1) WHERE ON THE COMPLAINT OF AN INTERESTED PERSON, TRADE UNION, COUNCIL OF TRADE UNIONS



OR EMPLOYERS' ORGANIZATION THE BOARD IS SATISFIED THAT A TRADE UNION OR COUNCIL OF TRADE UNIONS CALLED OR AUTHORIZED OR THREATENED TO CALL OR AUTHORIZE AN UNLAWFUL STRIKE OR THAT AN OFFICER, OFFICIAL OR AGENT OF A TRADE UNION OR COUNCIL OF TRADE UNIONS COUNSELLED OR PROCURED OR SUPPORTED OR ENCOURAGED AN UNLAWFUL STRIKE OR THREATENED AN UNLAWFUL STRIKE, OR THAT EMPLOYEES ENGAGED IN OR THREATENED TO ENGAGE IN AN UNLAWFUL STRIKE, IT MAY DIRECT WHAT ACTION IF ANY A PERSON, EMPLOYEE, EMPLOYER, EMPLOYERS' ORGANIZATION, TRADE UNION OR COUNCIL OF TRADE UNIONS AND THEIR OFFICERS, OFFICIALS OR AGENTS SHALL DO OR REFRAIN FROM DOING WITH RESPECT TO THE UNLAWFUL STRIKE OR THE THREAT OF AN UNLAWFUL STRIKE."

3. DONALD CANN, FOREMAN FOR THE STEEL ERECTING COMPANY (EMERALD ERECTORS) TESTIFIED THAT HE WAS A MEMBER OF THE IRONWORKERS UNION, AND THAT HE WAS ON THE JOB SITE, AND THAT WHEN HE REPORTED FOR WORK ON MONDAY, FEBRUARY 14TH, THERE WAS A "BUNCH OF FELLOWS WITH SIGNS WALKING BACK AND FORTH" AND THAT HE ASSUMED THAT THIS WAS A PICKET LINE. HIS MEN WERE IN CARS AND THAT THEY HAD NOT GONE TO WORK. BELIEVING THAT THE JOB MIGHT BE SHUT DOWN HE CANCELLED AN ORDER FOR A CRANE BETWEEN 7.30 AND 8 O'CLOCK AND GOT THE CRANE OFF THE PREMISES. HE ADVISED THAT HE ASSUMED THAT THE REASON HIS MEN HAD NOT GONE TO WORK WAS BECAUSE THEY WOULD NOT CROSS A PICKET LINE, NOR WOULD HE, AS HE WAS A WORKING MAN. HE STATED THAT HE AND HIS CREW WERE SCHEDULED TO WORK AND THAT THEY LEFT THE JOB SITE AROUND 9.30 AND SHORTLY AFTER THIS TIME IT BEGAN TO RAIN HEAVILY AND HE WENT HOME HIMSELF.
4. HE FURTHER TESTIFIED THAT ON TUESDAY, FEBRUARY 15TH, HE REPORTED FOR WORK BETWEEN 7.30 AND 8. HIS MEN DID NOT REPORT, HOWEVER, HIS EMPLOYER MADE SEVERAL PHONE CALLS AND THE MEN FINALLY CAME TO WORK BETWEEN 9 AND 9.30.
5. MOREOVER, RICHARD CROWLE TESTIFIED THAT NEITHER THE STEELWORKERS OR THE BRICK LAYERS SHOWED UP FOR WORK ON MONDAY, FEBRUARY 14TH, AND THAT TO HIM THE PICKET LINE MEANT HARASSMENT OF SOME KIND.
6. THE OTHER EVIDENCE THAT I THINK IS IMPORTANT IS THAT OF MR. JOHN CROWLE, AN EMPLOYEE OF NORTH SIMCOE ELECTRIC WHO TESTIFIED THAT HE HAD WORKED FOR NORTH SIMCOE ELECTRIC FOR TWO YEARS, BUT THAT HE HAD BEEN A MEMBER OF

A TRADE UNION FOR 25 YEARS AND THAT HE UNDERSTOOD THAT THE PURPOSE OF A PICKET LINE WAS TO CAUSE STRESS TO AN EMPLOYER AND UNION MEMBERS WERE EDUCATED NOT TO CROSS A PICKET LINE REGARDLESS OF "WHAT IS WAS THERE FOR".

7. HE FURTHER TESTIFIED THAT IN 1971 WHILE WORKING ON A JOB SITE IN LINDSAY FOR NORTH SIMCOE ELECTRIC, A PICKET LINE HAD BEEN SET UP BY THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS AND THAT HE UNDERSTOOD THAT THIS WAS THE IBEW BECAUSE THE SIGNS SAID THE SAME THING AS THEY SAID IN THE INSTANT CASE, NAMELY, AT THE BREALY DRIVE CAMPUS OF SIR STANDFORD FLEMING COLLEGE, PETERBOROUGH, WHICH SIGNS HAD THE IBEW INITIALS PRINTED ON THEM IN ADDITION TO THE OTHER MATERIAL.
8. IT IS CLEAR THAT THE INSTANT CASE IS NOT THE FIRST TIME THAT THE NORTH SIMCOE ELECTRIC HAS BEEN HARASSED BY PICKETS.
9. IN QUOTING SECTION 123 OF THE ACT I HAVE EMPHASIZED THOSE POINTS WHICH I THINK ARE PARTICULARLY IMPORTANT IN THIS CASE. FIRST OF ALL THAT THE COMPLAINT CAN BE REGISTERED BY ANY INTERESTED PERSON, AND SECONDLY, THAT NOWHERE IN THIS SECTION IS THERE ANY INDICATION THAT THE APPLICANT MUST PROVE TO BE HARMED. INDEED THE SECTION DEALS WITH THREATENING UNLAWFUL STRIKE AND EMPOWERS THE BOARD, WITH DISCRETION, TO ISSUE AN ORDER TO REFRAIN FROM THREATENING AN UNLAWFUL STRIKE. THE MAJORITY SEEMS TO HAVE INDICATED IN PARAGRAPH 12 OF ITS DECISION THAT AN ESSENTIAL INGREDIENT IN SEEKING RELIEF IS THAT THE APPLICANT OR SOME OTHER PARTY MUST SHOW EVIDENCE OF SUFFERING HARM AS A RESULT OF THE ECONOMIC PRESSURE. IT WOULD SEEM TO ME VERY DIFFICULT IN A CASE WHERE THERE HAS ONLY BEEN A THREAT OF A STRIKE TO PRODUCE EVIDENCE OF HARM BEING DONE AND YET THE LEGISLATURE HAS CLEARLY GIVEN THE BOARD THE AUTHORITY TO ISSUE AN ORDER REFRAINING A PARTY OR PERSON FROM THREATENING TO STRIKE.
10. IN PARAGRAPH 13 OF THE MAJORITY DECISION, IT WOULD SEEM THAT THE CONCLUSION HAS BEEN REACHED THAT THERE WAS IN EFFECT HARM DONE, BUT NOT VERY MUCH, AND I WOULD AGREE WITH THE MAJORITY THAT THE HARM ABATED ON TUESDAY.
11. IN TOTALITY, I WOULD HAVE CONCLUDED THAT THE APPLICANT WAS SEEKING RELIEF BECAUSE THEY NEVER KNEW WHEN A NEW PICKET LINE WOULD BE MOUNTED AND WHAT THE CONTINUING EFFECTS OF SUCH A PICKET LINE MIGHT BE. IN ARRIVING AT THIS CONCLUSION I HAVE KEPT IN MIND THE EVIDENCE THAT IT IS NOT THE FIRST TIME THE RESPONDENT

HAS PICKETED JOB SITES ON WHICH THE APPLICANT HAS BEEN THE ELECTRICAL CONTRACTOR.

12. HAVING REGARD FOR ALL OF THE EVIDENCE I WOULD HAVE ISSUED AN ORDER DIRECTING THE RESPONDENTS TO DISCONTINUE ENCOURAGING AN UNLAWFUL STRIKE OR THREATENING TO ENCOURAGE AN UNLAWFUL STRIKE AT THE BREALY DRIVE CAMPUS OF THE SIR STANFORD FLEMING COLLEGE IN PETERBOROUGH, AND TO CEASE AND DESIST ANY OTHER ACTIVITIES WHICH WOULD IN ANY WAY SUPPORT OR ENCOURAGE AN UNLAWFUL STRIKE OF ANY OF THE EMPLOYEES ON THE PROJECT.

3053-72-R: AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. F. G. BRADLEY CO. LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS F. W. MURRAY AND P. J. O'KEEFFE.

APPEARANCES AT THE HEARING: J. SACK, V. GENTILE AND G. ELLIS FOR THE APPLICANT; W. G. PHELPS FOR THE RESPONDENT; G. WOOD AND D. SMOLKA FOR THE OBJECTORS.

DECISION OF VICE-CHAIRMAN FRANK V. BOSCARIOL AND BOARD MEMBER P. J. O'KEEFFE: JUNE 11, 1973.

1. PURSUANT TO THE INITIAL DECISION OF THE BOARD DATED JANUARY 16, 1973, THE BOARD HEARD EVIDENCE FROM CERTAIN EMPLOYEES OF THE RESPONDENT, VIZ. MESSRS. WARD, FRIEDRICH, SMOLKA AND SOUSA IN RELATION TO THE STATEMENTS OF DESIRE FILED IN THESE PROCEEDINGS. AT THE CONCLUSION OF THIS INQUIRY ON FEBRUARY 22, 1973, THE RESPONDENT RENEWED ITS EARLIER MOTION REQUESTING PARTICULARS CONCERNING CERTAIN CHARGES FILED BY THE APPLICANT AS CONTAINED IN ITS LETTER TO THE BOARD DATED JANUARY 18, 1973, THE RELEVANT PORTIONS OF WHICH APPEAR AS FOLLOWS:

"2. ON OR ABOUT JANUARY 2, 1973 DOUGLAS HIGGINS, A FOREMAN, DURING WORKING HOURS AND ON THE COMPANY PREMISES, INTERROGATED AN EMPLOYEE REGARDING THE UNION.

3. ON OR ABOUT JANUARY 4, 1973 BETWEEN THE HOURS OF 8 AND 11 ON THE COMPANY PREMISES, GUIDO SCHUSTER, A FOREMAN, TOLD AN EMPLOYEE THAT HE WOULD LOSE HIS PENSION, BONUS AND OTHER RIGHTS AND WOULD RECEIVE NO OVERTIME IF HE DID NOT SIGN THE PETITION AND THAT IF HE DID SIGN THE PETITION, HE WOULD RECEIVE MORE MONEY. ON THE SAME DAY BETWEEN THE



HOURS OF 3 AND 5 O'CLOCK, THE SAID EMPLOYEE WAS TOLD TO GO TO THE OFFICE OF FRANK SPITZIER, COMPANY SUPERVISOR, WHO REPEATED TO HIM AN OFFER OF A WAGE INCREASE IF HE WOULD SIGN THE PETITION AND THREATENED HIM WITH LOSS OF BENEFITS IF HE DID NOT. THE SAID EMPLOYEE SIGNED THE PETITION IN THE OFFICE OF THE SAID SUPERVISOR. THE SAID EMPLOYEE RECEIVED A PAY INCREASE IN THE NEXT PAY CHEQUE."

THE NAME "FRANK SPITZIER" AS SHOWN IN ITEM #3 OF THIS LETTER WAS SUBSEQUENTLY AMENDED TO READ "FRANK SPAZIERER."

2. IN RESPONSE THERETO, THE RESPONDENT BY LETTER DATED FEBRUARY 7, 1973, HAD ADVISED THE BOARD AS FOLLOWS:

"WE REQUEST THE NAME OF THE EMPLOYEE ALLEGEDLY INTERROGATED BY MR. HIGGINS ON JANUARY 2ND, 1973 AND THE NAME OF THE EMPLOYEE ALLEGEDLY THREATENED BY MR. SCHUSTER ON JANUARY 4TH, 1973.

PREPARATION OF THE RESPONDENT'S DEFENCE TO THESE ALLEGATIONS IS HAMPERED BY LACK OF THESE PARTICULARS."

3. UPON HEARING THE ARGUMENTS OF COUNSEL IN THIS REGARD THE BOARD RULED, HAVING REGARD TO THE PROVISIONS OF RULE 47(1) OF THE BOARD'S RULES OF PROCEDURE AND TO THE PRINCIPLES AS SET OUT IN THE TORONTO STAR LIMITED CASE [1971] OLRB REP. P. 34, THAT THE APPLICANT WAS NOT REQUIRED TO DISCLOSE THE NAME OF THE EMPLOYEE (OR EMPLOYEES) ALLEGED TO HAVE BEEN INTIMIDATED IN THESE CIRCUMSTANCES. AT THE CONTINUATION OF HEARING OF THIS MATTER ON MARCH 28, 1973, THE APPLICANT ACCORDINGLY PROCEEDED TO ADDUCE EVIDENCE IN SUPPORT OF ITS CHARGES. HOWEVER, THE APPLICANT WAS UNABLE TO CONCLUDE ITS EVIDENCE AT THIS TIME AND PROCEEDINGS WERE ACCORDINGLY ADJOURNED TO A DATE WHICH HAD BEEN PREVIOUSLY SET BY THE REGISTRAR.

4. AT THE FURTHER CONTINUATION OF HEARING OF THIS MATTER ON APRIL 10, 1973, THE APPLICANT CALLED VLADIMIR HERJAVAC, A MAINTENANCE MECHANIC IN THE EMPLOY OF THE RESPONDENT, IN AN ATTEMPT TO ADDUCE EVIDENCE IN SUPPORT OF ITS CHARGES AS SET OUT IN ITEM #3 OF THE APPLICANT'S LETTER AS REFERRED TO IN PARAGRAPH #1 HEREIN. HOWEVER, UPON RECEIVING A NEGATIVE RESPONSE TO QUESTIONS PUT BY COUNSEL FOR THE APPLICANT, THE LATTER SOUGHT LEAVE OF THE BOARD PURSUANT TO THE PROVISIONS OF SECTION 24 OF THE EVIDENCE ACT R.S.O. 1970, VOL. 2, CHAPTER 151, TO PERMIT CROSS-EXAMINATION OF HIS WITNESS ON THE BASIS OF PREVIOUS INCONSISTENT STATEMENTS MADE TO CERTAIN REPRESENTATIVES OF THE APPLICANT, INCLUDING THE SAID COUNSEL HIMSELF. BOTH COUNSEL FOR THE RESPONDENT AND THE OBJECTORS OPPOSED THIS MOTION.

5. SECTION 24 OF THE EVIDENCE ACT PROVIDES:

"24. A PARTY PRODUCING A WITNESS SHALL NOT BE ALLOWED TO IMPEACH HIS CREDIT BY GENERAL EVIDENCE OF BAD CHARACTER, BUT HE MAY CONTRADICT HIM BY OTHER EVIDENCE, OR, IF THE WITNESS IN THE OPINION OF THE JUDGE OR OTHER PERSON PRESIDING PROVES ADVERSE, SUCH PARTY MAY, BY LEAVE OF THE JUDGE OR OTHER PERSON PRESIDING, PROVE THAT THE WITNESS MADE AT SOME OTHER TIME A STATEMENT INCONSISTENT WITH HIS PRESENT TESTIMONY, BUT BEFORE SUCH LAST-MENTIONED PROOF IS GIVEN THE CIRCUMSTANCES OF THE PROPOSED STATEMENT SUFFICIENT TO DESIGNATE THE PARTICULAR OCCASION SHALL BE MENTIONED TO THE WITNESS AND HE SHALL BE ASKED WHETHER OR NOT HE DID MAKE SUCH STATEMENT."

6. UPON HEARING ARGUMENT FROM THE RESPECTIVE COUNSEL ON BEHALF OF THE PARTIES IN THIS REGARD, THE BOARD ORDERED THAT COUNSEL FOR THE APPLICANT PUT TO THE WITNESS THE NATURE OF THE ALLEGED PRIOR STATEMENTS AND THE CIRCUMSTANCES INCIDENTAL THERETO. IN RESPONSE TO DIRECT QUESTIONING BY COUNSEL FOR THE APPLICANT, HERJAVAC FLATLY DENIED MAKING ANY STATEMENTS AT VARIOUS TIMES PRIOR TO THE HEARING OF THIS MATTER ON APRIL 10, 1973, TO CERTAIN REPRESENTATIVES OF THE APPLICANT TO THE EFFECT THAT PRIOR TO SIGNING ONE OF THE STATEMENTS OF DESIRE FILED HEREIN, HE (HERJAVAC) HAD BEEN APPROACHED BY MESSRS. SCHUSTER AND SPAZIERER ON JANUARY 4, 1973, IN THE MANNER AS SET OUT IN ITEM #3 OF THE APPLICANT'S LETTER AS REFERRED TO IN PARAGRAPH #1 HEREIN.

7. THE INITIAL POSITION TAKEN BY COUNSEL FOR THE RESPONDENT IN THIS RESPECT IS TO THE EFFECT THAT THE TERM "ADVERSE" AS APPEARING IN SECTION 24 OF THE EVIDENCE ACT MEANS IN ESSENCE "HOSTILE" AND THAT BEFORE THE BOARD COULD EMBARK UPON AN INQUIRY PURSUANT TO THIS PROVISION, IT MUST BE SATISFIED THAT THE WITNESS ON THE BASIS OF HIS Demeanour IN THE WITNESS BOX, IS LYING. COUNSEL FOR THE APPLICANT, ON THE OTHER HAND, MAINTAINED THAT THE TWO WORDS ARE NOT SYNONYMOUS AND THAT TO PROVE ADVERSITY IN A WITNESS, IT IS ONLY NECESSARY TO SHOW THAT HIS INTERESTS ARE NOT THE SAME AND ARE MERELY UNFAVOURABLE TO THOSE OF THE PARTY CALLING HIM. IN SUPPORT OF THIS CONTENTION COUNSEL FOR THE APPLICANT RELIED UPON THE DECISION OF THE ONTARIO COURT OF APPEAL IN WAWANESSA MUTUAL INSURANCE CO. V HANES (1961) 28 D.L.R. (2d) 386. IN THAT CASE, THE RULING OF THE TRIAL JUDGE IN THE COURT BELOW IN DISMISSING A MOTION BY COUNSEL FOR THE PLAINTIFF, (MADE PURSUANT TO SECTION 24 OF THE EVIDENCE ACT) TO BE PERMITTED TO ADDUCE EVIDENCE TO THE EFFECT THAT THE TWO WITNESSES PREVIOUSLY CALLED BY HIM HAD PRIOR TO THE TRIAL MADE CERTAIN STATEMENTS IN DIRECT CONFLICT TO THEIR TESTIMONY, WAS QUESTIONED. IN REACHING HIS DECISION, IT WOULD APPEAR THAT THE TRIAL JUDGE WHO ALSO REFUSED TO PERMIT COUNSEL FOR THE PLAINTIFF TO CROSS-EXAMINE THESE WITNESSES, CONFINED HIMSELF SOLELY TO

THE DEMEANOUR OF THESE WITNESSES AND REFUSED TO CONSIDER EXTRANEOUS EVIDENCE FOR THE PURPOSE OF DECIDING WHETHER THE WITNESS WAS "ADVERSE". A MAJORITY OF THE COURT, NAMELY PORTER C.J.O. AND MCKAY J.A., (ROACH J.A. DISSENTING) HELD THAT THE TERM "ADVERSE" AS FOUND IN SECTION 24 OF THE EVIDENCE ACT APPLIES TO ENABLE THE ADMISSION OF PRIOR INCONSISTENT STATEMENTS MADE NOT ONLY BY A HOSTILE WITNESS (NAMELY ONE WITH HOSTILITY OF MIND), BUT BY ONE WHO THOUGH NOT HOSTILE IS UNFAVOURABLE IN THE SENSE OF TAKING A POSITION OPPOSED TO THAT OF THE PARTY CALLING HIM. ACCORDINGLY, THE MAJORITY WERE OF THE OPINION THAT PROOF OF THE FACT THAT THE WITNESS HAD MADE A PRIOR INCONSISTENT STATEMENT IS ADMISSIBLE FOR THE PURPOSE OF MAKING A DECLARATION THAT THE WITNESS IS ADVERSE OR HOSTILE, PROVIDED THAT THE WITNESS IS ASKED WHETHER HE MADE THE PRIOR INCONSISTENT STATEMENT AND THAT THE STATEMENT IS SPECIFICALLY DENIED BY SUCH WITNESS. IN CONTRAST TO THE MAJORITY, ROACH J.A. SUPPORTED THE TRIAL JUDGE'S INTERPRETATION THAT "ADVERSE" IN SECTION 24 MEANT "HOSTILE" AND THAT BEFORE ANY EVIDENCE COULD BE ADDUCED THAT THE WITNESS HAD MADE A STATEMENT INCONSISTENT WITH HIS TESTIMONY, THE JUDGE MUST BE SATISFIED THAT THE WITNESS'S DEMEANOUR REFLECTS A HOSTILITY OF MIND, OR IN OTHER WORDS, THAT HE IS NOT TELLING THE TRUTH. THE MATTER WAS THEN APPEALED TO THE SUPREME COURT OF CANADA IN HANES V WAWANESSA MUTUAL INSURANCE Co. (1963) 36 D.L.R. (2d) 718 WHERE THE MAJORITY OF THE COURT ALLOWED THE APPEAL, BUT ON OTHER GROUNDS. THE ONLY MEMBER OF THE COURT TO DEAL WITH THE MATTER INVOLVING SECTION 24 OF THE EVIDENCE ACT, WAS CARTWRIGHT J., WHO IN A DISSENTING JUDGMENT, ESSENTIALLY ADOPTED THE REASONING IN THE DISSENTING DECISION OF ROACH J.A. IN THE APPEAL COURT BELOW.

8. HAVING REGARD TO THE UNSETTLED STATE OF THE LAW, IT WOULD NEVERTHELESS APPEAR THAT THE REASONING OF THE MAJORITY IN THE ONTARIO COURT OF APPEAL REPRESENTS THE MOST RECENT RELEVANT AUTHORITY ON THE SUBJECT AND THE ONE WHICH THIS BOARD OUGHT TO FOLLOW. IN THIS REGARD, WE ALSO SUPPORT THE CONTENTION OF COUNSEL FOR THE APPLICANT THAT THE ADMISSION OF SUCH PRIOR INCONSISTENT STATEMENTS IN THE CIRCUMSTANCES AS SET OUT ABOVE INCLUDES ORAL AS WELL AS WRITTEN STATEMENTS.

9. TO SUMMARIZE THEREFORE, THE BOARD UPON A MOTION MADE PURSUANT TO SECTION 24 OF THE EVIDENCE ACT, WILL PERMIT COUNSEL TO ADDUCE EVIDENCE OF PRIOR STATEMENTS ALLEGEDLY MADE BY HIS WITNESS WHICH ARE INCONSISTENT WITH THE TESTIMONY OF SUCH WITNESS AS ADDUCED DURING THE COURSE OF THE HEARING, PROVIDED THAT THESE STATEMENTS ARE PUT TO THE WITNESS AND THE WITNESS DENIES MAKING THEM. COUNSEL'S INQUIRY IN THIS REGARD WILL BE RESTRICTED GENERALLY TO QUESTIONS RELATING TO THE CIRCUMSTANCES SURROUNDING THE MAKING OF THE ALLEGED INCONSISTENT STATEMENTS AND HE WILL NOT BE PERMITTED TO CROSS-EXAMINE HIS WITNESS ON EXTRANEOUS MATTERS. OF COURSE, IF THE WITNESS ADMITS THE STATEMENT, THAT ENDS THE MATTER. ASSUMING HOWEVER THAT THE STATEMENTS ARE DENIED, COUNSEL WILL THEN BE PERMITTED TO INTRODUCE EVIDENCE TO SHOW THAT SUCH ALLEGED STATEMENTS WERE IN FACT MADE. AT THE CONCLUSION OF SUCH EVIDENCE, THE BOARD MUST THEN DECIDE AS TO WHETHER ON THE BALANCE OF PROBABILITIES THE ALLEGED PRIOR INCONSISTENT STATEMENTS WERE IN FACT MADE. IF THE BOARD IS SATISFIED ON THE BASIS OF ALL OF THE EVIDENCE THAT THE STATEMENTS WERE MADE,



THEN NORMALLY COUNSEL WILL BE PERMITTED TO CROSS-EXAMINE THE WITNESSES ON THE BASIS THAT THE WITNESS IS "ADVERSE" OR "HOSTILE".

10. THE BOARD ACCORDINGLY AT THE CONTINUATION OF HEARING OF THIS MATTER ON APRIL 10, 1973, PERMITTED THE APPLICANT TO CALL EVIDENCE CONCERNING THE ALLEGED INCONSISTENT STATEMENTS AFTER HEARING HERJAVAC'S GENERAL DENIAL IN THIS REGARD. UPON HEARING THE EVIDENCE OF GEORGE ELLIS THE UNION ORGANIZER AND VINCENT GENTILE THE INTERNATIONAL REPRESENTATIVE, AND THE REPRESENTATIONS OF THE PARTIES THERETO, THE BOARD, AT THE FURTHER CONTINUATION OF HEARING OF THIS MATTER ON MAY 28, 1973, DECLARED THAT HERJAVAC WAS "ADVERSE" WITHIN THE MEANING OF SECTION 24 OF THE EVIDENCE ACT SUCH THAT COUNSEL FOR THE APPLICANT COULD CROSS-EXAMINE HIS WITNESS CONCERNING THE ALLEGED PRIOR INCONSISTENT STATEMENTS AS EVIDENCED IN THE "VOIR DIRE" PROCEEDINGS.

11. HOWEVER, UPON DELIVERY OF THIS ORAL RULING TO THE PARTIES, COUNSEL FOR THE APPLICANT ADVISED THE BOARD THAT HERJAVAC HAD APPROACHED HIM DURING THE RECESS OCCASIONED BY THE BOARD'S DELIBERATIONS IN THIS MATTER. HE FURTHER STATED THAT HERJAVAC WISHED TO NOW MAKE A FURTHER STATEMENT TO THE BOARD AND THAT THEREFORE IT WOULD NOT BE NECESSARY FOR COUNSEL TO CROSS-EXAMINE HIM.

12. AT THIS POINT, HERJAVAC WAS RECALLED AND APPEARED VISIBLY SHAKEN. HIS TESTIMONY, WHICH REPRESENTS A COMPLETE REVERSAL AND ABOUT-FACE FROM HIS EVIDENCE AS PREVIOUSLY ADDUCED BEFORE THIS BOARD ON APRIL 10, 1973, IS AS FOLLOWS: ON JANUARY 4, 1973, HE WAS APPROACHED BY GUIDO SCHUSTER IN THE RESPONDENT'S MACHINE ROOM AND ASKED TO SIGN A STATEMENT OF DESIRE AGAINST THE UNION. HE WAS FURTHER INFORMED BY SCHUSTER THAT IF THE UNION WAS SUCCESSFUL THEN THE EMPLOYEES WOULD LOSE THEIR BONUS AND CERTAIN MEDICAL BENEFITS. WHEN HERJAVAC INDICATED HIS UNCERTAINTY IN CONFORMING WITH THIS REQUEST, SCHUSTER ADVISED HIM TO ATTEND AT THE OFFICE OF FRANK SPAZIERER, THE PLANT SUPERINTENDENT. UPON LEAVING THE MACHINE ROOM, HERJAVAC WAS MET BY FRANK SPAZIERER AND INVITED INTO HIS OFFICE. FRANK SPAZIERER THEN ADVISED HIM TO SIGN THE STATEMENT OF DESIRE FOR THE SAME REASONS PREVIOUSLY GIVEN TO HIM BY SCHUSTER. AT THIS POINT HERJAVAC REMINDED FRANK SPAZIERER OF HIS PREVIOUS REQUESTS FOR A WAGE INCREASE. FRANK SPAZIERER REPLIED, IN EFFECT, THAT HE WOULD GET THE INCREASE AND THAT, IN ANY EVENT, ANY SHORT TERM GAINS FOR THE EMPLOYEES MADE BY A UNION WOULD RESULT IN THE EMPLOYEES LOSING MONEY IN THE LONG-RUN. UPON LEAVING THE OFFICE, HERJAVAC ASKED FOR TIME TO THINK THE MATTER OVER AND TOLD FRANK SPAZIERER THAT HE WOULD HAVE AN ANSWER FOR HIM LATER THAT AFTERNOON. LATER THAT DAY, SMOLKA ASKED HIM TO SIGN THE STATEMENT OF DESIRE BUT HE REFUSED. AT 3:30 P.M., FRANK SPAZIERER AND FRIEDRICH, ATTENDED AT HERJAVAC'S PLACE OF WORK AND FRANK SPAZIERER INSTRUCTED HIM TO GO INTO HIS OFFICE WITH FRIEDRICH IN ORDER TO SIGN THE PETITION. HERJAVAC AGREED AND THE THREE INDIVIDUALS ATTENDED THE OFFICE WHEREUPON FRIEDRICH HANDED HERJAVAC THE PETITION WHICH HE THEN PROCEEDED TO SIGN.

13. UPON CROSS-EXAMINATION, HERJAVAC AGREED WITH COUNSEL FOR THE RESPONDENT THAT IT WAS EXPLAINED TO HIM AT A MEETING OF EMPLOYEES CALLED

BY MR. BRADLEY, THE OWNER OF THE RESPONDENT, IN NOVEMBER OF 1972, THAT THE USUAL CHRISTMAS BONUS WOULD CEASE UPON THE IMPLEMENTATION OF A NEW OPERATION BY THE RESPONDENT. ALTHOUGH CONCEDED THAT HE HAD BEEN PROMISED A WAGE INCREASE ON DECEMBER 29, 1972, BY FRANK SPAZIERER THE DAY FOLLOWING THE POSTING OF THIS APPLICATION, AND WHICH INCREASE IN FACT WAS INCLUDED IN HIS PAY CHEQUE ON JANUARY 10, 1973 AND MADE RETROACTIVE TO JANUARY 2, 1973, HERJAVAC TESTIFIED THAT IMMEDIATELY PRIOR TO SIGNING THE STATEMENT OF DESIRE ON JANUARY 4, 1973, HE WAS NEVERTHELESS NOT CERTAIN THAT HE WOULD GET THE INCREASE AS ORIGINALLY INDICATED. IN THIS REGARD, HERJAVAC STATED THAT HIS IMMEDIATE FOREMAN, FRITZ SPAZIERER (FRANK SPAZIERER'S BROTHER) HAD PREVIOUSLY INFORMED HIM THAT HE KNEW THAT HE (HERJAVAC) HAD SIGNED A CARD IN THE APPLICANT. IT WAS HERJAVAC'S CONTENTION THAT IT WAS AT THIS TIME THAT THE RESPONDENT FIRST BEGAN TO EXERT PRESSURE UPON HIM TO OPPOSE THE APPLICANT AND WHICH CULMINATED IN HIS GIVING FALSE EVIDENCE BEFORE THIS BOARD ON APRIL 10, 1973. IT IS NOTEWORTHY THAT AT THE TIME OF HERJAVAC'S SUBSEQUENT TESTIMONY ON MAY 28 AND MAY 29, 1973, HE WAS NO LONGER AN EMPLOYEE OF THE RESPONDENT HAVING QUIT ON APRIL 27, 1973, AND HAVING SINCE FOUND ALTERNATE EMPLOYMENT.

14. IN REPLY, COUNSEL FOR THE OBJECTORS RECALLED FRIEDRICH WHO CATEGORICALLY DENIED THAT FRANK SPAZIERER WAS PRESENT IN THE OFFICE WHEN HERJAVAC SIGNED THE STATEMENT OF DESIRE UPON ITS PRESENTATION TO HIM BY FRIEDRICH. THE RESPONDENT'S EVIDENCE AS ADDUCED IN THIS REGARD THROUGH HANS OPPER, THE PLANT ENGINEER AND MAINTENANCE SUPERVISOR, IS THAT FRANK SPAZIERER HAD NO AUTHORITY OVER THE EMPLOYEES, FOR ALTHOUGH FORMERLY HOLDING THE POSITION OF PLANT SUPERINTENDENT SINCE AUGUST OF 1972, HE HAS BEEN RETAINED BY THE RESPONDENT MERELY AS A CONSULTANT UPON A TWO DAY PER WEEK BASIS. IN CONTRAST TO FRIEDRICH'S EVIDENCE, HE STATED THAT GUIDO SCHUSTER, DID NOT EXERCISE MANAGERIAL FUNCTIONS AS A FOREMAN BUT WAS MERELY A LEAD HAND. UPON CROSS-EXAMINATION, HE STATED THAT HE KNEW THAT THE APPLICANT HAD BEEN ATTEMPTING TO ORGANIZE THE EMPLOYEES SINCE OCTOBER OF 1972. OPPER DENIED HAVING ANY KNOWLEDGE OF THE STATEMENTS OF DESIRE UNTIL THE INITIAL HEARING OF THIS MATTER ON JANUARY 15, 1973, CONTRARY TO HERJAVAC'S TESTIMONY. HE FURTHER DENIED DISCUSSING THE STATEMENTS OF DESIRE WITH HERJAVAC OR INTIMIDATING HIM IN ANY MANNER WHATSOEVER DURING THE COURSE OF THESE LENGTHY PROCEEDINGS. HE DID INDICATE HOWEVER THAT HE DID DISCUSS WITH FRANK SPAZIERER THE MERITS OF THE EMPLOYEES FILING A STATEMENT OF DESIRE IN THESE PROCEEDINGS.

15. HAVING CAREFULLY REVIEWED THE TOTALITY OF THE EVIDENCE AS ADDUCED, WE ARE SATISFIED THAT BOTH FRANK SPAZIERER AND GUIDO SCHUSTER, AT LEAST AS FAR AS THE EMPLOYEES WERE CONCERNED, EXERCISED MANAGERIAL FUNCTIONS AND THEREFORE HAD THE POWER TO AFFECT THEIR EMPLOYMENT STATUS ACCORDING TO THE PRINCIPLES AS SET OUT IN THE LINK MANUFACTURING COMPANY LIMITED CASE (BOARD FILE NO. 48682-53-R).

16. THE DIFFICULT TASK NOW CONFRONTING THIS BOARD IS TO DETERMINE WHETHER, HAVING REGARD TO THE EVIDENCE AS ADDUCED, THE APPLICANT HAS ON THE BALANCE OF PROBABILITIES, SATISFIED THE ONUS OF PROOF CAST UPON IT

TO ESTABLISH ITS CHARGES AS SET OUT IN ITS LETTER DATED JANUARY 18, 1973, AND MORE PARTICULARLY, ITEM #3 AS QUOTED IN PARAGRAPH #1 HEREIN.

17. COUNSEL FOR THE OBJECTORS URGES THE BOARD TO PREFER FRIEDRICH'S VERSION OF THE EVIDENCE CONCERNING THE CIRCUMSTANCES SURROUNDING THE OBTAINING OF HERJAVAC'S SIGNATURE ON THE STATEMENT OF DESIRE, TO THAT ELICITED FROM AN "ADMITTED PERJURER" BEFORE THIS BOARD. COUNSEL FOR THE RESPONDENT'S POSITION IS THAT HERJAVAC IS NOT A CREDIBLE WITNESS HAVING REGARD TO THE INCONSISTENCIES IN HIS TESTIMONY, BUT SHOULD THE BOARD NEVERTHELESS BELIEVE HERJAVAC, A "CONFESSED LIAR", THEN THE STATEMENTS OF DESIRE MUST STILL STAND IN VIEW OF THE FACT THAT THE LATTER'S EVIDENCE RELATES TO ONLY ONE OF THE NINETEEN OVERLAPS APPARENT IN THESE DOCUMENTS. COUNSEL FOR THE APPLICANT TAKES THE VIEW THAT IF THE BOARD WERE TO DISBELIEVE HERJAVAC SIMPLY BECAUSE HE HAD PREVIOUSLY LIED BEFORE US, THEN THE OBTAINING OF A DECLARATION PURSUANT TO THE EVIDENCE ACT WOULD MERELY CONSTITUTE AN EXERCISE IN FUTILITY AS THE RESULT WOULD BE MEANINGLESS. HE FURTHER DREW TO OUR ATTENTION, THE FACT THAT THE VERY PERSONS AGAINST WHOM THE CHARGES ARE MADE, VIZ. GUIDO SCHUSTER AND FRANK SPAZIERER, ALTHOUGH PRESENT DURING THE COURSE OF PART OF THESE PROCEEDINGS, WERE NOT CALLED UPON TO TESTIFY. FROM THIS, THE BOARD IS ASKED TO DRAW THE INFERENCE THAT THE ALLEGATIONS AS CONTAINED IN THE CHARGES ARE CORRECT.

18. THE BOARD HAS CAREFULLY SCRUTINIZED THE DEMEANOUR OF HERJAVAC AS DISPLAYED IN HIS VARIOUS APPEARANCES BEFORE US IN THE WITNESS BOX DURING THE COURSE OF THESE HEARINGS. WE ARE SATISFIED THAT HIS EVIDENCE AS ELICITED ON MAY 28 AND MAY 29, 1973, AT A TIME WHEN HE SEVERED ALL CONNECTIONS WITH THE RESPONDENT AND WAS GAINFULLY EMPLOYED ELSEWHERE, WAS THE DIRECT RESULT OF PANGS OF CONSCIENCE EMANATING FROM HIS BELIEF THAT HE HAD BETRAYED HIS FELLOW EMPLOYEES WHEN HE GAVE PERJURED TESTIMONY BEFORE THIS BOARD ON APRIL 10, 1973. WE ARE SATISFIED THAT HIS SUBSEQUENT TESTIMONY WAS TRUTHFUL AND WE ACCORDINGLY PREFER HIS EVIDENCE INsofar AS IT GENERALLY RELATES TO THE ALLEGATIONS IN ITEM #3 OF THE CHARGES AS ABOVE QUOTED. THE FAILURE OF THE RESPONDENT TO CALL GUIDO SCHUSTER, AND ESPECIALLY FRANK SPAZIERER TO CORROBORATE FRIEDRICH'S TESTIMONY IN THIS REGARD, IN ALL OF THE CIRCUMSTANCES OF THIS CASE, LENDS FURTHER CREDENCE TO OUR FINDING. IN OUR OPINION, THIS SITUATION IS NOT ENTIRELY UNLIKE THE CIRCUMSTANCES AS SET OUT IN THE BEAVER ENGINEERING LIMITED CASE [1973] OLRB REP., P. 57 WHERE THE BOARD AT PAGE 60 STATED:

"FURTHER, THE GENERAL MANAGER OF BEAVER ENGINEERING LIMITED WAS PRESENT AT THE HEARING. THE FAILURE TO PRODUCE HIM AS A WITNESS OR EXPLAIN THE CIRCUMSTANCES PERMITS THIS BOARD TO DRAW THE INFERENCE THAT THE UNPRODUCED EVIDENCE WOULD BE CONTRARY TO THE EMPLOYER'S CASE, OR AT LEAST WOULD NOT SUPPORT IT; MURRAY V. SASKATOON (1952) 2 D.L.R. 499 AT 505 (SASK. CT. OF APP.), AND SINCE THE CIRCUMSTANCES SURROUNDING THE TRANSACTIONS WERE ENTIRELY WITHIN THE



KNOWLEDGE OF THE EMPLOYER THEY CANNOT COMPLAIN  
IF THE INFERENCES DRAWN FROM THE ESTABLISHED  
FACTS ARE NOT FAVOURABLE TO THEM; BUSUTTIL V.  
DIAMOND T. TRUCKS (TORONTO) LTD. ET AL (1969)  
2 D.L.R. (3RD) 167 AT 168 (ONT. CT. OF APP.)."

19. IN THE RESULT, WE ARE SATISFIED THAT THE APPLICANT HAS, ON THE  
BALANCE OF PROBABILITIES, SUBSTANTIALLY ESTABLISHED ITS CHARGES AS SET  
OUT ABOVE.

20. HAVING REGARD TO ALL OF THE CIRCUMSTANCES OF THIS CASE, WE ARE  
THEREFORE NOT PREPARED TO GIVE EFFECT TO THE STATEMENTS OF DESIRE AS REP-  
RESENTING A VOLUNTARY EXPRESSION OF THE DESIRES OF THE SIGNATORIES THERE-  
TO SO AS TO MAKE IT NECESSARY FOR THE BOARD TO SEEK THE CONFIRMATORY EVI-  
DENCE OF A REPRESENTATION VOTE. AS THIS CONCLUSION PROPERLY DISPOSES OF  
THIS APPLICATION, IT ACCORDINGLY WILL NOT BE NECESSARY TO DEAL WITH ANY  
OTHER MATTERS ARISING DURING THE COURSE OF THESE BITTERLY CONTESTED PRO-  
CEEDINGS.

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22. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER F. W. MURRAY: JUNE 11, 1973.

I DISSENT FOR REASONS TO BE GIVEN LATER IN WRITING.

2857-72-R: INTERNATIONAL UNION OF ELECTRICAL, RADIO & MACHINE WORKERS,  
AFL-CIO-CLC (APPLICANT) V. SIMPLICITY PRODUCTS DIVISION OF MCGRAW-EDISON  
CANADA LIMITED (RESPONDENT).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL  
AND O. HODGES.

APPEARANCES AT THE HEARING: S. T. GOUDGE, H. HADDAWAY AND B. CRAIGS  
FOR THE APPLICANT; B. H. STEWART, J. CAKEBREAD, C. KELLY AND R. AUSTIN  
FOR THE RESPONDENT; M. SOMERVILLE FOR THE SIMPLICITY WORKERS' ASSOCIA-  
TION.

DECISION OF THE BOARD: MAY 31, 1973.

1. ON NOVEMBER 16, 1972, AN APPLICATION FOR CERTIFICATION WAS  
FILED WHEREIN THE APPLICANT PROPOSED A BARGAINING UNIT, WITH CERTAIN  
EXCEPTIONS HEREIN NOT RELEVANT, CONSISTING OF ALL OF THE RESPONDENT'S  
EMPLOYEES AT GALT. THE RESPONDENT HOWEVER IN ITS REPLY DATED NOVEMBER  
27, 1972, SUGGESTED A BARGAINING UNIT COMPOSED OF ALL OF ITS EMPLOYEES  
AT GALT AND HESPELER. IN ADDITION, THE RESPONDENT SUBMITTED THAT THE  
APPLICATION WAS UNTIMELY OWING TO THE EXISTENCE OF A SUBSISTING COLLEC-  
TIVE AGREEMENT BETWEEN THE RESPONDENT AND THE SIMPLICITY WORKERS'

ASSOCIATION (HEREINAFTER REFERRED TO AS THE ASSOCIATION). ACCORDINGLY, BY TELEGRAM DATED NOVEMBER 28, 1972, THE DEPUTY REGISTRAR, PURSUANT TO THE INFORMATION AS SET OUT IN PARAGRAPH #7 OF THE RESPONDENT'S REPLY, NOTIFIED THE ASSOCIATION AT HESPELER THROUGH ITS PRESIDENT, G. RENTON OF THIS APPLICATION AND THAT A HEARING IN THIS REGARD WAS TO BE HELD ON DECEMBER 7, 1972. IN ADDITION, THIS INFORMATION APPEARED ON THE FORM 5 NOTICE TO EMPLOYEES WHICH WAS POSTED UPON THE RESPONDENT'S PREMISES AT GALT ON NOVEMBER 23, 1972. DESPITE THESE NOTICES, THE ASSOCIATION FAILED TO ATTEND AT THE INITIAL HEARING OF THIS MATTER ON DECEMBER 7, 1972, AND NO INTERVENTION OR OTHER CORRESPONDENCE WAS FILED WITH THE BOARD ON ITS BEHALF.

2. ACCORDINGLY, THE BOARD PROCEEDED WITH THE HEARING AS SCHEDULED ON DECEMBER 7, 1972, WHEREIN COUNSEL FOR THE RESPONDENT REITERATED HIS POSITION AS SET OUT IN HIS REPLY THAT A PURPORTED COLLECTIVE AGREEMENT ENTERED INTO BETWEEN THE RESPONDENT AND THE ASSOCIATION CONSTITUTED A BAR TO THE INSTANT APPLICATION. COUNSEL FOR THE APPLICANT OPPOSED THIS PRELIMINARY OBJECTION AND BOTH COUNSEL WERE IN AGREEMENT THAT THE BOARD SHOULD DISPOSE OF THIS ISSUE PRIOR TO DEALING WITH ANY OTHER MATTERS RAISED IN THE PROCEEDINGS. BASED UPON THE EVIDENCE AS ADDUCED AT THIS HEARING, THE BOARD IN ITS DECISION DATED DECEMBER 21, 1972, DECLINED TO IMPOSE A BAR TO THIS APPLICATION.

3. IT SHOULD BE NOTED THAT THE EVIDENCE AS ADDUCED IN THOSE PROCEEDINGS INCLUDED A PURPORTED COLLECTIVE AGREEMENT ENTERED INTO BETWEEN SIMPLICITY PRODUCTS LIMITED AND THE ASSOCIATION DATED FEBRUARY 18, 1971 (EXHIBIT NO. 1) WHEREIN THE LATTER WAS RECOGNIZED AS BARGAINING AGENT FOR CERTAIN OF THE EMPLOYEES AT THE PLANT IN HESPELER. THE EVIDENCE FURTHER DISCLOSED THAT IN ANTICIPATION OF A PLANNED EXPANSION OF OPERATIONS TO A NEW PLANT TO BE CONSTRUCTED IN GALT, SIMPLICITY PRODUCTS LIMITED AND THE ASSOCIATION ENTERED INTO A MEMORANDUM OF AGREEMENT DATED FEBRUARY 23, 1972, (EXHIBIT NO. 2) WHEREIN THESE PARTIES PURPORTED TO "AMEND" EXHIBIT NO. 1 BY, INTER ALIA, EXTENDING THE SCOPE CLAUSE TO INCLUDE THE EMPLOYEES TO BE ENGAGED AT THE NEW GALT PLANT AS WELL AS THE EMPLOYEES AT THE HESPELER PLANT. THE NEW PLANT BEGAN ACTUAL OPERATIONS IN AUGUST OF 1972, AND ALTHOUGH IT WAS SITUATE IN A DIFFERENT MUNICIPALITY, THAN THE OLDER PLANT, BOTH PLANTS ARE ONLY APPROXIMATELY TWO MILES APART. HOWEVER, EFFECTIVE JANUARY 1, 1973, BOTH THE MUNICIPALITIES OF HESPELER AND GALT HAVE NOW BEEN INCLUDED IN THE NEW AMALGAMATED MUNICIPALITY OF CAMBRIDGE.

4. IT IS THEREFORE IN THE LIGHT OF THIS RELEVANT BACKGROUND, THAT THE ASSOCIATION'S REQUEST TO BE NOW PERMITTED TO INTERVENE IN THESE PROCEEDINGS, MUST BE READ. AT THE SHOW CAUSE HEARING ON MAY 16, 1973, CALLED BY THE BOARD PURSUANT TO ITS DECISION IN THIS REGARD DATED MAY 9, 1973, COUNSEL FOR THE ASSOCIATION ALLEGED THAT AS NOTICE OF THIS APPLICATION WAS NOT POSTED IN THE HESPELER PLANT AND THAT AS THE NOTICE ONLY REFERRED TO THE EMPLOYEES AT THE GALT PLANT, IT WAS REASONABLE FOR THE ASSOCIATION TO ASSUME THAT THE HESPELER EMPLOYEES WOULD NOT BE EFFECTED AND THEREFORE IT DID NOT INTERVENE.

5. WITH THIS POSITION THIS BOARD MUST DISAGREE. ON THE BASIS OF THE EXHIBITS AS FILED AT THE INITIAL HEARING OF THIS MATTER, IT IS CLEAR THAT THE ASSOCIATION HAD A PURPORTED INTEREST NOT ONLY IN THE EMPLOYEES ENGAGED AT THE HESPELER PLANT (SEE EXHIBIT NO. 1) BUT ALSO TO THOSE WORKING AT THE GALT PLANT (SEE EXHIBIT NO. 2).

6. IN OUR OPINION, THE ASSOCIATION IN THE FACE OF SPECIFIC NOTICE AS EVIDENCED IN THE REGISTRAR'S TELEGRAM, CHOSE TO ABSENT ITSELF FROM THE INITIAL PROCEEDINGS, AT ITS PERIL. ACCORDINGLY, WE FIND IN ALL OF THE CIRCUMSTANCES THAT IT WOULD HAVE BEEN REASONABLE FOR THE ASSOCIATION TO INTERVENE AT THE OUTSET IN THIS MATTER IN ORDER TO PROTECT WHAT INTEREST IT MAY HAVE PURPORTED TO REPRESENT OVER THE EMPLOYEES AT BOTH THE HESPELER AND GALT LOCATIONS. IN THESE CIRCUMSTANCES, WE FURTHER FIND THAT IT WOULD ALSO HAVE BEEN REASONABLE FOR THE ASSOCIATION TO HAVE CONTEMPLATED THE POSSIBILITY OF THE BARGAINING UNIT AS PROPOSED BY THE APPLICANT BEING EXTENDED TO THE GALT EMPLOYEES AS THIS IS THE VERY RESULT, IT WOULD APPEAR, THAT IT PURPORTED TO ACHIEVE IN ENTERING INTO EXHIBIT NO. 2.

7. IN THE RESULT, WE FIND NO JUSTIFICATION IN DELAYING THESE PROCEEDINGS ANY FURTHER SO AS TO PERMIT THE ASSOCIATION TO INTERVENE. WE ARE FURTHER SATISFIED THIS FINDING DOES NOT RESULT IN A DENIAL OF NATURAL JUSTICE TO THE EMPLOYEES AT THE HESPELER PLANT AS SUGGESTED BY COUNSEL FOR THE ASSOCIATION. EVEN IF CERTAIN OF THE RESPONDENT'S EMPLOYEES WERE NOT DULY INFORMED OF THE NATURE OF THIS APPLICATION, THEY NEVERTHELESS ARE IN A POSITION TO VOICE THEIR OPPOSITION SHOULD THEY SO DESIRE, IN THE REPRESENTATION VOTE WHICH WILL BE ORDERED IN THESE PROCEEDINGS AS SET OUT BELOW. ACCORDINGLY, THE REQUEST OF THE ASSOCIATION TO INTERVENE IN THESE PROCEEDINGS IS DENIED.

8. HAVING REGARD THEREFORE TO THE REPRESENTATIONS OF THE PARTIES AS ADDUCED AT THE HEARING OF THIS MATTER ON MAY 16, 1973, THE BOARD FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT CAMBRIDGE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, SALARIED FIELD SERVICE REPRESENTATIVES, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

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12. THE MATTER IS REFERRED TO THE REGISTRAR.

3534-72-R: GENERAL TRUCK DRIVERS' UNION LOCAL 938 INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS (APPLICANT) V. L & W EXPRESS LIMITED (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS H. J. F. ADE AND E. BOYER.



APPEARANCES AT THE HEARING: I. J. THOMSON AND W. REILLY APPEARING FOR THE APPLICANT; S. C. BERNARDO AND CLARENCE KASTNER APPEARING FOR THE RESPONDENT.

DECISION OF THE BOARD: JUNE 18, 1973.

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2. THIS IS AN APPLICATION FOR CERTIFICATION IN WHICH THE RESPONDENT ALLEGES THAT ITS BUSINESS IS A FEDERAL UNDERTAKING, AND THUS OUTSIDE THE OPERATION OF THE LABOUR RELATIONS ACT AND THE JURISDICTION OF THE BOARD.

3. THE RESPONDENT'S BUSINESS IS INTERRELATED WITH THAT OF H'WK FORWARDING LIMITED, A CORPORATION WHOSE BUSINESS IS CONCEDED BY ALL PARTIES AND HAS BEEN FOUND BY THIS BOARD TO FALL OUTSIDE ITS JURISDICTION (OLRB, M.R., MARCH 1970, P. 1450). A FRESH APPLICATION FOR CERTIFICATION WAS MADE BY THE APPLICANT HEREIN WITH RESPECT TO H'WK FORWARDING LIMITED (BOARD FILE NO. 3532-72-R) WHICH CAME ON FOR HEARING AT THE SAME TIME AS THE PRESENT APPLICATION. THE PARTIES AGREED THAT THE MATTERS BE HEARD TOGETHER AND THAT THE EVIDENCE BE APPLIED TO BOTH APPLICATIONS.

4. THE APPLICANT HAVING REGARD THE EVIDENCE CONCEDED AND THE BOARD SO FINDS THAT H'WK FORWARDING LIMITED IS STILL AN UNDERTAKING FALLING OUTSIDE THE JURISDICTION OF THIS BOARD. THE APPLICATION IN FILE NO. 3532-72-R WAS ACCORDINGLY DISMISSED.

5. FOR THE PURPOSE OF DISPOSING OF THE INSTANT APPLICATION, IT IS NECESSARY TO EXAMINE BRIEFLY THE OPERATIONS OF H'WK FORWARDING LIMITED. THE LATTER, AS THE NAME INDICATES, IS A FREIGHT FORWARDING AGENCY. H'WK FORWARDING LIMITED CONTRACTS WITH ITS CUSTOMERS TO PICK UP FREIGHT FROM THE CUSTOMERS' ESTABLISHMENT FOR DELIVERY VIA CNR TO H'WK FORWARDING LIMITED DELIVERY POINTS OUTSIDE THE PROVINCE OF ONTARIO. THE COMPANY IS NOT INVOLVED IN INTRA-PROVINCIAL TRAFFIC. EVERYTHING IT RECEIVES IS SHIPPED OUT OF THE PROVINCE BY RAILWAY CARS WHICH ARE LOADED BY EMPLOYEES OF H'WK FORWARDING LIMITED.

6. L & W EXPRESS LIMITED, THE RESPONDENT HEREIN, BECAME AN INCORPORATED COMPANY ON OR ABOUT JANUARY 12, 1972. PRIOR TO THAT DATE, THE BUSINESS HAD BEEN OPERATED AS L & W EXPRESS. IN OR ABOUT MARCH 1972, THE PROPRIETORS OF L & W EXPRESS APPROACHED H'WK FORWARDING LIMITED FOR FINANCIAL SUPPORT OR PURCHASE OF THE BUSINESS. H'WK FORWARDING LIMITED HAD EMPLOYED THE SERVICES OF L & W EXPRESS AS EXCLUSIVE PICK-UP AGENTS SINCE 1967. H'WK FORWARDING LIMITED AGREED TO PURCHASE L & W EXPRESS IN DECEMBER 1972. THE BUSINESS WAS, AS NOTED, THEREUPON INCORPORATED AS L & W EXPRESS LIMITED AND IS WHOLLY OWNED BY THE PRINCIPALS OF H'WK FORWARDING LIMITED. THE INCORPORATED COMPANY CONTINUES TO ACT AS EXCLUSIVE PICK-UP AGENT FOR H'WK FORWARDING LIMITED.

7. THE EVIDENCE IS THAT NINETY PER CENT OF THE FREIGHT SHIPPED BY

H'WK FORWARDING LIMITED IS PICKED UP AT THE PREMISES OF THE MANUFACTURERS OR DISTRIBUTORS CONCERNED BY TRUCKS OWNED BY THE RESPONDENT COMPANY AND DELIVERED TO H'WK FORWARDING LIMITED WAREHOUSES AND LOADING DOCKS FOR LOADING ON TO RAILWAY CARS. THE REMAINDER IS BROUGHT IN BY THE MANUFACTURERS OR DISTRIBUTORS THEMSELVES OR BY OTHER CARTAGE COMPANIES. THE OFF-LOADING OF THE TRUCKS AND THE LOADING OF THE RAILWAY CARS IS ALL PERFORMED BY EMPLOYEES OF H'WK FORWARDING LIMITED ONLY. THE EMPLOYEES OF THE RESPONDENT COMPANY DO NOT TAKE ANY PART IN THESE ACTIVITIES.

7. ALTHOUGH L & W EXPRESS LIMITED REMAINS THE SOLE PICK-UP AGENT USED BY H'WK FORWARDING LIMITED, ITS WORK IS NOT CONFINED TO SERVICING THAT COMPANY. AS ALREADY OBSERVED, L & W EXPRESS LIMITED PICKS UP NINETY PER CENT OF ALL FREIGHT BY H'WK FORWARDING LIMITED. THE REMAINING TEN PER CENT IS DELIVERED TO H'WK FORWARDING LIMITED BY THE CUSTOMER OR OTHER CARTAGE COMPANIES. THE WORK OF L & W EXPRESS CONNECTED WITH H'WK FORWARDING LIMITED COMPRISES ABOUT SIXTY-FIVE PER CENT OF L & W EXPRESS LIMITED BUSINESS. THE REMAINDER OF ITS BUSINESS COMES FROM GENERAL CARTAGE WORK FOR VARIOUS COMPANIES, SOME OF WHOM MAY BE CUSTOMERS OF H'WK FORWARDING LIMITED REQUIRING INTRA-CITY MOVES. H'WK FORWARDING LIMITED SOLICITS THIS TYPE OF BUSINESS FOR L & W EXPRESS LIMITED.

9. IT WAS ARGUED BY THE RESPONDENT THAT SINCE H'WK FORWARDING LIMITED WAS CONTRACTUALLY OBLIGED TO PICK UP FREIGHT AT THE CUSTOMERS' PREMISES, THE WORK DONE ON ITS BEHALF BY THE RESPONDENT WAS NECESSARILY INCIDENTAL TO OR FORMED AN INTEGRAL PART OF THE UNDERTAKING OF H'WK FORWARDING LIMITED AND THEREFORE, FALLS OUTSIDE THE JURISDICTION OF THIS BOARD. THERE WAS ALSO EVIDENCE, AS NOTED, THAT SOME WAS DELIVERED BY CUSTOMERS AND SOME BY OTHER CARTAGE COMPANIES.

10. HAVING REGARD TO THE PRINCIPLES SET OUT IN REFERENCE RE VALIDITY OF INDUSTRIAL RELATIONS AND DISPUTES INVESTIGATION ACT (CAN.), AND APPLICABILITY IN RESPECT OF CERTAIN EMPLOYEES OF EASTERN CANADA STEVEDORING Co. [1955] 3 D.L.R. 721, [1955] S.C.R. 529 COMMONLY CALLED THE STEVEDORING CASE AND IN REGINA V. O.L.R.B. EX PARTE DUNN (1963) 39 D.L.R. (2ND) 346, THE BOARD FINDS ON THE BASIS OF ALL THE EVIDENCE THAT THE BUSINESS CARRIED ON BY THE RESPONDENT IS NOT NECESSARILY INCIDENTAL TO AND DOES NOT FORM AN INTERGAL PART OF THE BUSINESS OF H'WK FORWARDING LIMITED AND THUS LIES WITHIN THE JURISDICTION OF THIS BOARD.

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3541-72-R: ASSOCIATION OF COMMERCIAL AND TECHNICAL EMPLOYEES LOCAL 1701 (APPLICANT) V. CANADIAN UNDERWRITERS' ASSOCIATION (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS H.J.F. ADE AND E. BOYER.

## DECISION OF THE BOARD:

JUNE 21, 1973.

1. BY A DECISION OF THE BOARD DATED MAY 23, 1973, FOR THE REASONS SET OUT THEREIN, THE BOARD FOUND THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.
2. BY LETTER DATED JUNE 8, 1973, COUNSEL FOR THE RESPONDENT NOTED THAT THERE WAS NO EVIDENCE BEFORE THE BOARD THAT THE CONSTITUTION AND BY-LAWS OF THE APPLICANT WERE AT ANY TIME APPROVED OR RATIFIED BY THE EMPLOYEES OF THE RESPONDENT WHO WERE ALLEGED TO COMPRISE THE MEMBERSHIP OF THE APPLICANT. COUNSEL IN HIS LETTER SUBMITS THAT IN ITS DECISION OF MAY 23, 1973 THE BOARD DID NOT DEAL WITH THE REPRESENTATIONS WHICH HE MADE AT THE HEARING OF THE APPLICATION THAT THE ABSENCE OF SUCH APPROVAL OR RATIFICATION OF THE CONSTITUTION WAS A FATAL DEFECT IN THE FORMATION OF THE APPLICANT UNION. ON THIS BASIS, COUNSEL IS REQUESTING THAT THE BOARD RECONSIDER ITS DECISION OF MAY 23, 1973 IN WHICH IT ACCORDED TO THE APPLICANT THE STATUS OF A TRADE UNION WITHIN THE MEANING OF THE ACT.
3. ARTICLE XVI OF THE CONSTITUTION OF THE CANADIAN LABOUR CONGRESS (HEREINAFTER REFERRED TO AS THE C.L.C.) AUTHORIZES THAT BODY TO ISSUE CHARTERS TO LOCAL UNIONS AND THE BOARD HAS LONG RECOGNIZED THE C.L.C. AS A CHARTERING BODY (SEE FILTRO ELECTRIC LIMITED OLRB M.R. SEPTEMBER 1964 P. 281). THE EMPLOYEES OF THE RESPONDENT AT THE ORGANIZATIONAL MEETING OF THE APPLICANT ON MARCH 22, 1973, WITH THE EXPRESS INTENT OF MAKING APPLICATION FOR CHARTER AS A LOCAL UNION IN THE C.L.C., FORMED THEIR UNION AND ELECTED OFFICERS IN COMPLIANCE WITH THE BY-LAWS GOVERNING DIRECTLY CHARTERED LOCAL UNIONS OF THE C.L.C. THE SAID BY-LAWS SPECIFICALLY PROVIDE THAT ALL DIRECTLY CHARTERED LOCAL UNIONS ARE SUBJECT TO AND BOUND BY THE C.L.C. CONSTITUTION. THE OFFICERS, ACTING ON THE MANDATE GIVEN TO THEM BY THE EMPLOYEES OF THE RESPONDENT IN ATTENDANCE AT THE MARCH 22 MEETING, APPLIED FOR AND WERE GRANTED A CHARTER AS A LOCAL UNION IN THE C.L.C. IN THE NAME OF THE APPLICANT LOCAL 1701.
4. HAVING REGARD TO THE COURSE OF CONDUCT FOLLOWED BY THE EMPLOYEES OF THE RESPONDENT IN FORMING A UNION AND IN APPLYING FOR AND SECURING A CHARTER AS A LOCAL UNION IN THE C.L.C., THEY, IN EFFECT, EXPRESSED THEIR APPROVAL AND ACCEPTANCE OF THE CONSTITUTION AND BY-LAWS OF THE C.L.C. ANY FORMAL RATIFICATION OF THE CONSTITUTION AND BY-LAWS OF THE C.L.C. AT THE MEETING OF MARCH 22 OR SUBSEQUENT THERETO ACCORDINGLY WAS NOT NECESSARY AND, IN FACT, WOULD HAVE BEEN SUPERFLUOUS. WE THEREFORE REJECT THE SUBMISSION ADVANCED BY COUNSEL FOR THE RESPONDENT THAT THE FAILURE OF THE EMPLOYEES OF THE RESPONDENT COMPRISING THE MEMBERSHIP OF THE APPLICANT TO FORMALLY RATIFY THE CONSTITUTION AND BY-LAWS OF THE C.L.C. CONSTITUTED A FATAL DEFECT IN THE FORMATION OF THE APPLICANT.
5. WE WOULD MENTION THAT DIFFERENT CONSIDERATIONS APPLY IN THE CASE OF THE FORMATION OF A SINGLE UNIT ASSOCIATION OF EMPLOYEES THAN THOSE WHICH APPLY IN THE CASE OF A DIRECTLY CHARTERED LOCAL OF THE C.L.C. IN THE FORMER CASE, THE ADOPTION OR RATIFICATION OF A CONSTITUTION IS THE ONLY EVIDENCE THAT CAN ESTABLISH THAT THE APPLICANT IS AN ORGANIZATION



OF EMPLOYEES FORMED FOR THE PURPOSE OF REGULATING RELATIONS BETWEEN THE EMPLOYEES CONCERNED AND THEIR EMPLOYER. THE POSITION OF A DIRECTLY CHARTERED LOCAL IS CLOSER TO THAT OF A LOCAL UNION CHARTERED BY A NATIONAL OR INTERNATIONAL TRADE UNION. IN THE LATTER CASE, THE BOARD WILL ACCEPT A CHARTER ISSUED BY AN EXISTING PARENT TRADE UNION AS EVIDENCE THAT THE CHARTERED LOCAL IS AN ORGANIZATION OF EMPLOYEES FORMED FOR THE PURPOSE SET OUT IN SECTION 1(1)(N) OF THE ACT AND DOES NOT REQUIRE EVIDENCE THAT THE MEMBERS OF THE NEWLY CHARTERED LOCAL HAVE RATIFIED THE CONSTITUTION OF THE PARENT BODY. FOR, AS IN THE CASE OF A DIRECTLY CHARTERED LOCAL OF THE C.L.C., TO DO SO WOULD BE SUPERFLUOUS SINCE THE PERSONS WHO FORMED THE LOCAL MAKE APPLICATION FOR THE CHARTER UNDER THE PROVISIONS OF THE CONSTITUTION OF THE PARENT BODY AND THE CHARTER IS ISSUED UNDER THE AUTHORITY OF THE CONSTITUTION (SEE PACIFIC PLATING LIMITED CASE, BOARD FILE No. 3364-72-R).

6. ACCORDINGLY, WE WOULD REAFFIRM THAT BASED ON THE EVIDENCE ADDUCED AT THE HEARING OF THE INSTANT APPLICATION, WE ARE SATISFIED THAT THE APPLICANT IS AN ORGANIZATION OF EMPLOYEES FORMED FOR PURPOSES THAT INCLUDE THE REGULATING OF RELATIONS BETWEEN EMPLOYEES AND EMPLOYERS AND THAT IT IS THEREFORE A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE ACT. WE WOULD ADD THAT THE QUESTION AS TO THE ACCEPTABILITY OF THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT THAT WAS SIGNED PRIOR TO ITS FORMATION AND BEFORE A LOCAL UNION NUMBER WAS ASSIGNED TO IT BY THE C.L.C., WHICH WAS DEALT WITH BY THE BOARD IN ITS DECISION OF MAY 28, 1973, IS AN ISSUE SEPARATE AND APART FROM THE QUESTION OF THE STATUS OF THE APPLICANT AS A TRADE UNION (SEE STEDMAN BROTHERS LIMITED OLRB M.R. FEBRUARY 1962 P. 386 AND M. LOEB LIMITED OLRB M.R. MAY 1962 P. 69).

7. HAVING REGARD TO ALL OF THE FOREGOING, THE BOARD SEES NO REASON TO REVOKE ITS DECISION OF MAY 23, 1973 OR ITS FINDING THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE ACT. THE REQUEST FOR RECONSIDERATION MADE BY COUNSEL FOR THE RESPONDENT THEREFORE IS DENIED.

3508-72-U: TEXTILE WORKERS UNION OF AMERICA, CLC, AFL-CIO (COMPLAINANT)  
V. BURLINGTON CARPET MILLS CANADA LTD. (RESPONDENT).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS J.D. BELL AND O. HODGES.

APPEARANCES AT THE HEARING: HAROLD F. CALEY AND BUD CLARKE FOR THE APPLICANT; C.G. RIGGS, LARRY MORRISON, R.K. SANDERS AND FRANK MARCO FOR THE RESPONDENT.

DECISION OF THE BOARD: JUNE 20, 1973.

1. THIS IS AN APPLICATION UNDER SECTION 79 OF THE LABOUR RELATIONS ACT ALLEGING THAT THE GRIEVOR WAS DISCHARGED FOR UNION ACTIVITY CONTRARY TO SECTIONS 58 AND 61 OF THE LABOUR RELATIONS ACT.

2. THE EVIDENCE INDICATES THAT THE GRIEVOR WAS A MEMBER OF THE UNION AND THAT ON OR ABOUT MARCH 6, 1973, HE WAS DISMISSED.

3. THE GRIEVOR CLAIMS THAT APPROXIMATELY THREE WEEKS BEFORE HIS DISMISSAL HE WAS QUESTIONED BY THE FOREMAN ABOUT HIS UNION MEMBERSHIP AND THAT DURING THE CONVERSATION THE FOREMAN INDICATED OPPOSITION TO THE UNION. THE FOREMAN DENIES QUESTIONING THE GRIEVOR ABOUT HIS UNION ACTIVITY, BUT EXPLAINS THAT THERE WAS A REPRESENTATION VOTE AND BECAUSE SOME EMPLOYEES DID NOT FULLY UNDERSTAND THE NATURE OF THE VOTE, THE COMPANY ENDEAVOURED TO EXPLAIN TO THE EMPLOYEES THE PROCEDURE TO BE FOLLOWED. THE FOREMAN TESTIFIED THAT WHEN HE DISCUSSED THE MATTER WITH THE GRIEVOR HE EXPLAINED THE PROCEDURE TO BE FOLLOWED IN THE REPRESENTATION VOTE, AND HE DENIES INDICATING TO THE GRIEVOR THAT HE WAS OPPOSED TO THE UNION.

4. IN ASSESSING THE EVIDENCE RESPECTING THE CONVERSATION WE ARE NOT PERSUADED ON THE BALANCE OF PROBABILITIES THAT THE GRIEVOR'S VERSION IS MORE ACCURATE THAN THE VERSION OF THE FOREMAN. THERE WAS OBVIOUSLY DIFFICULTY CREATED BECAUSE OF A LANGUAGE BARRIER, AND IT MAY VERY WELL BE THAT THE CONVERSATION WAS MISUNDERSTOOD BY THE GRIEVOR. WE ARE NOT PREPARED THEREFORE IN THESE CIRCUMSTANCES TO MAKE A FINDING THAT THE GRIEVOR HAS ESTABLISHED THE FOREMAN'S HOSTILITY TO THE UNION.

5. THE INCIDENT THAT BROUGHT ABOUT THE DISCHARGE OCCURRED ON MARCH 6, 1973, WHEN THE GRIEVOR WAS ASKED BY THE FOREMAN TO STOP SMOKING. THE GRIEVOR WAS PUSHING A CONTAINER OF FLAMMABLE MATERIAL AND OBJECTED TO THE FOREMAN'S ORDER. AS A RESULT A DISPUTE TOOK PLACE BETWEEN THE GRIEVOR AND HIS FOREMAN AND THE GRIEVOR WAS DISCHARGED DURING THAT DISPUTE. THE FOREMAN INDICATED THAT HE HAD HAD DIFFICULTY WITH THE GRIEVOR ON OTHER OCCASIONS BOTH FOR LATENESS AND FOR SMOKING, AND ON ONE OTHER OCCASION WHEN HE TRIED TO EXPLAIN CERTAIN PROCEDURE TO THE GRIEVOR THE GRIEVOR REFUSED TO DISCUSS THE INCIDENT WITH HIM. THE FOREMAN CLAIMS THAT THE INCIDENT OF MARCH 6, 1973, WAS THE FINAL STRAW IN HIS RELATIONSHIP WITH THE GRIEVOR AND THAT WHEN THE DISPUTE BECAME HEATED HE DISCHARGED THE GRIEVOR. THE GRIEVOR DOES NOT DISPUTE THE OCCURRENCE, BUT CLAIMS THAT HE WAS BEING TREATED DIFFERENTLY FROM OTHER EMPLOYEES WHO WERE PERMITTED TO SMOKE IN THE NON-SMOKING AREA. APPARENTLY THERE ARE AREAS WHERE SMOKING IS PROHIBITED AND OTHER AREAS WHERE IT IS ALLOWED. THE GRIEVOR ADMITS TO BEING TOLD ON NUMEROUS OCCASIONS TO REFRAIN FROM SMOKING IN THE NON-SMOKING AREA.

6. AFTER CONSIDERING THE EVIDENCE WE FIND THAT ON MARCH 6, 1973, THE GRIEVOR WAS ABUSING THE PLANT RULES, AND THAT AS A RESULT OF THE ORDER BY THE FOREMAN THE GRIEVOR BECAME AGITATED. WE FIND THAT DURING THE DISPUTE THE FOREMAN DISCHARGED THE GRIEVOR AND WE FIND NOTHING IN THE EVENTS OF MARCH 6, 1973, TO LINK THE GRIEVOR'S DISCHARGE WITH UNION ACTIVITY OR WITH THE ALLEGED INCIDENT WHERE THE FOREMAN DISCUSSED THE REPRESENTATION VOTE WITH THE GRIEVOR. THE EXPLANATION GIVEN BY THE COMPANY IS A CREDIBLE ONE AND ACCORDINGLY THE COMPANY HAS SATISFIED THE REQUIREMENT OF THIS BOARD; SEE RETAIL, WHOLESALE AND DEPARTMENT STORE UNION AND NATIONAL AUTOMATIC VENDING Co. LTD. 63 CLLC 1161.

7. THE COMPLAINT IS THEREFORE DISMISSED.

916-71-M: NORMAN JOHN FRIEND (APPLICANT) V. THE CANADIAN UNION OF PUBLIC EMPLOYEES, AND ITS LOCAL NO. 1196 (RESPONDENT TRADE UNION) V. THE YORK COUNTY BOARD OF EDUCATION (RESPONDENT EMPLOYER).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: R. D. PECK FOR THE APPLICANT; S. R. HENNESSEY AND J. H. BIRD FOR THE RESPONDENT TRADE UNION; NO ONE FOR THE RESPONDENT EMPLOYER.

DECISION OF J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBER J.E.C. ROBINSON, Q.C.: JUNE 20, 1973.

1. THIS IS AN APPLICATION UNDER SECTION 39 OF THE LABOUR RELATIONS ACT WHEREIN THE BOARD IN ITS DECISION DATED JANUARY 19, 1972 FOUND THAT THE APPLICANT, BECAUSE OF HIS RELIGIOUS CONVICTION OR BELIEF, OBJECTS TO JOINING THE RESPONDENT TRADE UNION AND OBJECTS TO THE PAYING OF UNION DUES OR OTHER ASSESSMENTS TO THE RESPONDENT TRADE UNION. PARAGRAPH 5 OF THE BOARD'S DECISION READS AS FOLLOWS:

5. THE BOARD THEREFORE ORDERS AND DIRECTS THAT THE PROVISIONS OF THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT EMPLOYER AND THE RESPONDENT UNION WHICH ARE OF THE TYPE MENTIONED IN SECTION 38(1)(A) OF THE ACT DO NOT APPLY TO THE APPLICANT AND ACCORDINGLY THE APPLICANT IS NOT REQUIRED TO JOIN THE RESPONDENT UNION, TO BE OR TO CONTINUE TO BE A MEMBER OF THE RESPONDENT UNION OR TO PAY ANY DUES, FEES OR OTHER ASSESSMENTS TO THE RESPONDENT UNION PROVIDED THAT AMOUNTS EQUAL TO ANY INITIATION FEES, DUES OR OTHER ASSESSMENTS ARE PAID BY THE APPLICANT TO OR ARE REMITTED BY THE RESPONDENT EMPLOYER TO A CHARITABLE ORGANIZATION MUTUALLY AGREED UPON BY THE APPLICANT AND THE RESPONDENT TRADE UNION.

2. IN VIEW OF THE FACT THAT THE PARTIES WERE UNABLE TO MUTUALLY AGREE UPON THE CHARITABLE ORGANIZATION TO WHOM THE AMOUNTS REFERRED TO ABOVE WERE TO BE PAID, THE BOARD, IN ITS DECISION DATED MAY 25, 1972, DESIGNATED THE ONTARIO HEART FOUNDATION TO BE THE RECIPIENT CHARITABLE ORGANIZATION. NO MONIES WERE PAID ON BEHALF OF THE APPLICANT TO THE ONTARIO HEART FOUNDATION UNTIL THE MONTH OF JUNE 1972. AMOUNTS EQUAL TO ONE MONTH'S DUES WERE PAID ON BEHALF OF THE APPLICANT TO THE ONTARIO HEART FOUNDATION FOR THE MONTHS OF JUNE AND JULY 1972 AND NO OTHER AMOUNTS WERE PAID ON BEHALF OF THE APPLICANT.

3. THE RESPONDENT TRADE UNION AND THE RESPONDENT EMPLOYER ENTERED



INTO A NEW COLLECTIVE AGREEMENT IN THE MONTH OF AUGUST 1972 WHICH WAS MADE RETROACTIVE TO SEPTEMBER 1, 1971.

4. IT WAS THE RESPONDENT UNION'S OPINION THAT THE BOARD'S ORDER TO PAY AMOUNTS EQUAL TO ANY INITIATION FEES, DUES OR OTHER ASSESSMENTS AS DIRECTED BY THE BOARD IN ITS DECISION OF JANUARY 19, 1972 COULD NOT TAKE EFFECT UNTIL THE PARTIES MUTUALLY AGREED UPON THE CHARITABLE ORGANIZATION, OR, FAILING SUCH AGREEMENT, THE CHARITABLE ORGANIZATION WAS DESIGNATED BY THE BOARD PURSUANT TO THE PROVISIONS OF SECTION 39(1) OF THE LABOUR RELATIONS ACT.

5. THE RESPONDENT UNION ALSO TOOK THE POSITION THAT THE EXEMPTION GRANTED TO THE APPLICANT WAS NOT AN EXEMPTION IN PERPETUITY BUT WAS ONLY FOR THE PERIOD OF OPERATION OF THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT UNION AND THE RESPONDENT EMPLOYER AT THE TIME THE BOARD'S DIRECTION WAS MADE.

6. HAVING CONSIDERED THE REPRESENTATIONS OF THE PARTIES, WE FIND NO MERIT IN THE RESPONDENT UNION'S SUBMISSIONS. THE BOARD'S ORDER AND DIRECTION OF JANUARY 19, 1972 TOOK EFFECT AS OF THE DATE IT WAS MADE. ALTHOUGH THE RECIPIENT CHARITY WAS NOT MUTUALLY AGREED UPON AND WAS SUBSEQUENTLY DESIGNATED BY THE BOARD ON MAY 25, 1972, ALL INITIATION FEES, DUES OR OTHER ASSESSMENTS WHICH WOULD HAVE BEEN OTHERWISE PAYABLE BY THE APPLICANT TO THE RESPONDENT TRADE UNION SUBSEQUENT TO JANUARY 19, 1972 SHOULD HAVE BEEN PAID ON BEHALF OF THE APPLICANT AT SUCH TIME AS THE RECIPIENT CHARITABLE ORGANIZATION WAS DESIGNATED BY THE BOARD. SUCH PAYMENT OUGHT TO HAVE INCLUDED ANY PAYMENTS THAT HAD ACCUMULATED PENDING THE DESIGNATION OF THE RECIPIENT CHARITY.

7. WE FURTHER FIND THAT SECTION 39 OF THE LABOUR RELATIONS ACT IN NO WAY LIMITS THE DURATION OF THE EXEMPTION GRANTED TO THE APPLICANT PURSUANT TO THE PROVISIONS OF SECTION 39. SIMILARLY THE BOARD'S DECISION OF JANUARY 19, 1972 AND PARTICULARLY PARAGRAPH 5 THEREOF DOES NOT LIMIT THE DURATION OF THE EXEMPTION GRANTED TO THE APPLICANT. WHILE IT MAY BE THAT THE BOARD'S ORDER AND DIRECTION WAS EXPRESSED IN LANGUAGE WHICH CAUSED THE RESPONDENT TRADE UNION TO TAKE THE POSITION IT HAS IN THIS MATTER, IT WAS THE BOARD'S INTENTION THAT NO TIME LIMITS BE PLACED ON THE EXEMPTION GRANTED TO THE APPLICANT. WHEN THE BOARD ORDERED AND DIRECTED THAT THE PROVISIONS OF THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT EMPLOYER AND THE RESPONDENT TRADE UNION...DO NOT APPLY TO THE APPLICANT, THE BOARD INTENDED THE ARTICLE "THE" TO MEAN "ANY". THIS MEANING IS CONSISTENT WITH THE DEFINITION OF THE ARTICLE "THE" CONTAINED IN THE SHORTER EXFORD ENGLISH DICTIONARY WHEREIN AN EXAMPLE OF THE USE OF THE ARTICLE "THE" IS SET OUT AS FOLLOWS --"WITH NAMES OF DAYS OF THE WEEK, AS ON THE MONDAY, I.E. ON MONDAY OF ANY OR EVERY WEEK, ON MONDAYS GENERALLY". IT WAS THE BOARD'S INTENTION THAT THE APPLICANT WOULD BE EXEMPTED FROM THE PAYMENT OF INITIATION FEES, DUES OR OTHER ASSESSMENTS PAYABLE UNDER ANY COLLECTIVE AGREEMENT THAT MAY EXIST FROM TIME TO TIME BETWEEN THE RESPONDENT TRADE UNION AND THE RESPONDENT EMPLOYER.

8. THE BOARD ACCORDINGLY DIRECTS THAT AMOUNTS EQUAL TO ANY INITIATION FEES, DUES OR OTHER ASSESSMENTS WHICH WERE OTHERWISE PAYABLE BY THE APPLICANT ON AND AFTER JANUARY 19, 1972 ARE TO BE PAID ON BEHALF OF THE APPLICANT TO THE ONTARIO HEART FOUNDATION, PURSUANT TO THE BOARD'S DIRECTIONS OF JANUARY 19, 1972 AND MAY 25, 1972 AND THAT SUCH PAYMENTS SHALL CONTINUE TO BE MADE ON BEHALF OF THE APPLICANT AS LONG AS THE APPLICANT CONTINUES TO BE A MEMBER OF THE BARGAINING UNIT DESCRIBED IN ANY COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT TRADE UNION AND THE RESPONDENT EMPLOYER.

9. BEFORE LEAVING THIS MATTER IT IS NOTED THAT IF EFFECT WERE GIVEN TO THE RESPONDENT TRADE UNION'S ARGUMENT THE PROVISIONS OF SECTION 39 OF THE ACT WOULD ONLY BE FOR THE DURATION OF A SINGLE COLLECTIVE AGREEMENT SINCE THE PROVISIONS OF SECTION 39(2)(A) WOULD PRECLUDE A SUBSEQUENT APPLICATION FOLLOWING THE RENEWAL OF THE COLLECTIVE AGREEMENT WHICH WAS FIRST ENTERED INTO CONTAINING PROVISIONS OF THE TYPE MENTIONED IN CLAUSE (A) OF SUBSECTION (1) OF SECTION 38 OF THE ACT. SUCH A RESTRICTIVE INTERPRETATION OF SECTION 39 WOULD BE INCONSISTENT WITH WHAT WE UNDERSTAND TO BE THE PURPOSE AND INTENT OF THE PROVISIONS OF SECTION 39.

DECISION OF BOARD MEMBER OLIVER HODGES: JUNE 20, 1973.

1. I CONCUR WITH THE MAJORITY IN THE MATTER OF THE CONTINUING EFFECT OF THE EXEMPTION, WITH THE QUALIFICATION THAT SUCH EXEMPTION IS SUBJECT TO CANCELLATION ANY TIME AT THE DISCRETION OF THE PERSON TO WHOM THE EXEMPTION APPLIES UPON NOTICE TO THE BOARD. RELIGIOUS CONVICTION OR BELIEF IS A STATE OF MIND. THAT INDIVIDUALS ARE FREE TO CHANGE THEIR RELIGIOUS CONVICTION OR BELIEF IS FUNDAMENTAL TO THE ADVANCEMENT OF THE HUMAN SPIRIT IN A FREE SOCIETY. THE LABOUR RELATIONS ACT HAS PROVIDED A ONE TIME OPPORTUNITY FOR RELIGIOUS EXEMPTION UNDER SECTION 39. ONCE GRANTED, THAT EXEMPTION CANNOT BE INTERFERED WITH UNLESS THE REASON FOR GRANTING THE EXEMPTION HAS CHANGED, AND THERE IS NO SUCH EVIDENCE BEFORE THE BOARD. MR. FRIEND HAS NOT INDICATED THAT HE HAS CHANGED HIS MIND IN THE MATTER OF HIS RELIGIOUS CONVICTION OR BELIEF, AND I CANNOT FIND ANY GROUND WITHIN SECTION 39 TO CHANGE THE ORIGINAL ORDER OF THE BOARD.

2. I DISSENTED FROM THE DECISION BY WHICH MR. FRIEND WAS GRANTED EXEMPTION, BECAUSE IN MY VIEW CONSIDERATIONS OTHER THAN RELIGIOUS CONVICTION OR BELIEF MOTIVATED MR. FRIEND. HOWEVER THAT MAY BE, THE MAJORITY DECISION GRANTED THE APPLICATION AND THAT IS THE DECISION OF THE BOARD.

2604-72-R: LABOUR BUREAU OF THE PAINTING AND DECORATING CONTRACTORS OF ONTARIO (APPLICANT) V. ONTARIO COUNCIL OF THE INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES (RESPONDENT) V. THE PAINTING SECTION OF THE WINDSOR CONSTRUCTION ASSOCIATION (INTERVENER #1) V. THE FEDERATION OF PAINTING AND DECORATING CONTRACTORS OF HAMILTON INC. (INTERVENER #2).

BEFORE: D.E. FRANKS, VICE-CHAIRMAN, AND BOARD MEMBERS H.J.F. ADE AND E. BOYER.

APPEARANCES AT THE HEARING: JAMES B. NOONAN AND CLIFTON HANEY FOR THE APPLICANT; A. MINSKY FOR THE RESPONDENT; H.B. GEDDES, Q.C. FOR INTERVENER #1; BRIAN W. MORISON, Q.C. FOR INTERVENER #2.

DECISION OF THE BOARD:

JUNE 22, 1973.

1. THIS IS AN APPLICATION FOR ACCREDITATION IN WHICH THE APPLICANT IS SEEKING TO BE ACCREDITED FOR A UNIT OF EMPLOYERS WHICH CONSISTS OF ALL EMPLOYERS OF EMPLOYEES ENGAGED IN PAINTING AND DECORATING WORK FOR WHOM THE RESPONDENT HAS BARGAINING RIGHTS IN THE PROVINCE OF ONTARIO IN THE INDUSTRIAL, COMMERCIAL AND INSTITUTIONAL SECTOR. SHORTLY AFTER THE MAKING OF THIS APPLICATION THE APPLICANT REQUESTED THE BOARD TO CONSIDER CERTAIN PRELIMINARY MATTERS RAISED BY THIS APPLICATION AND ANOTHER APPLICATION, (BOARD FILE No. 2687-72-R).
2. THE PRELIMINARY MATTERS RAISED IN THIS JOINT REQUEST WERE WHETHER THIS APPLICATION AND ANOTHER SIMILAR APPLICATION SHOULD BE JOINED BECAUSE THEY BOTH INVOLVED THE WHOLE OF THE PROVINCE OF ONTARIO, AND INDEED IF THEY COULD BE JOINED, THE PROPRIETY OF JOINING THE APPLICATIONS AT THE PRESENT STAGE. ALSO RAISED WAS THE QUESTION OF THE APPROPRIATENESS OF A PROVINCE-WIDE APPLICATION GIVEN THAT THE EXTENT OF MEMBERSHIP OF THE APPLICANT DID NOT COVER THE WHOLE OF THE PROVINCE.
3. THE INTERVENERS BOTH TOOK THE POSITION THAT THE BOARD COULD NOT AT THE PRESENT STAGE MAKE ANY FINAL DECISION WITH RESPECT TO THE APPROPRIATE UNIT OF EMPLOYERS SINCE THE EMPLOYERS AFFECTED BY THE APPLICATION HAD NOT YET BEEN GIVEN NOTICE OF THE APPLICATION. COUNSEL FOR THE APPLICANT AND THE RESPONDENT DID NOT TAKE ISSUE WITH THIS SUBMISSION, BUT SUGGESTED THAT IF THE BOARD WAS OF THE OPINION THAT IT DID NOT HAVE THE JURISDICTION UNDER SECTION 113 OF THE ACT, THERE WOULD BE NOTHING IMPROPER WITH THE BOARD DISMISSING THE APPLICATION AT THIS PRELIMINARY STAGE FOR A LACK OF JURISDICTION.
4. AT THE HEARING IT EMERGED THAT THE APPLICANT'S CONCERN IN THE PRESENT CASE WAS THE INTERPRETATION GIVEN TO SECTION 113 IN BOARD FILE No. 561-71-R, ONTARIO ERECTORS ASSOCIATION AND THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS LOCAL UNION 721 ET AL., [1971] O.L.R.B. REP. 522 (AUGUST 1971), TO LIMIT APPLICATIONS FOR ACCREDITATION TO ONE RESPONDENT, THAT IS, EITHER A TRADE UNION OR A COUNCIL OF TRADE UNIONS. IN THAT CASE THE APPLICANT HAD APPLIED FOR ACCREDITATION FOR A NUMBER OF LOCALS OF A TRADE UNION AND THE BOARD LIMITED THE APPLICATION TO ONLY ONE SUCH LOCAL. IN THE PRESENT CASE THE RESPONDENT IS A COUNCIL OF TRADE UNIONS AND A COUNCIL OF TRADE UNIONS CLEARLY FALLS WITHIN THE AMBIT OF SECTION 113 AS A RESPONDENT IN AN ACCREDITATION APPLICATION. AT THE HEARING IN THIS MATTER IT WAS REPRESENTED TO THE BOARD THAT THE RESPONDENT COUNCIL OF TRADE UNIONS IS COMPRISED OF SOME 13 LOCAL TRADE UNIONS ALL OF WHOM HAVE VESTED



THEIR BARGAINING RIGHTS IN THE COUNCIL OF TRADE UNIONS. SINCE THIS COUNCIL OF TRADE UNIONS IS NOT A CERTIFIED COUNCIL OF TRADE UNIONS THE BOARD HAS NO RECORD OF SUCH A VESTING. NOR HAS THE PRESENT COUNCIL OF TRADE UNIONS BEEN DETERMINED TO BE A COUNCIL OF TRADE UNIONS IN ANY OTHER PROCEEDING BEFORE THIS BOARD. ACCORDINGLY, PURSUANT TO THE POWER VESTED IN THE BOARD UNDER SECTION 75 OF THE LABOUR RELATIONS ACT, THE BOARD HEREBY DIRECTS THE RESPONDENT COUNCIL OF TRADE UNIONS TO FILE ITS CONSTITUTION WITH THE BOARD, AND THE BOARD FURTHER DIRECTS THE CONSTITUENT MEMBERS OF THE COUNCIL OF TRADE UNIONS TO FILE WITH THE BOARD THE BY-LAWS WHICH VEST POWER IN THE COUNCIL OF TRADE UNIONS TO ACT ON THEIR BEHALF. SUCH A FILING SHALL BE MADE WITHIN TWO WEEKS FROM THE DATE HEREOF.

5. AT THE HEARING IN THIS MATTER IT WAS ALSO BROUGHT TO THE BOARD'S ATTENTION THAT THE COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT COUNCIL CONSISTS OF 13 SEPARATE AGREEMENTS MADE BY THE RESPONDENT. CONCERN WAS VOICED AS TO WHETHER THESE 13 SEPARATE AGREEMENTS COULD CONSTITUTE THE BASIS FOR AN APPLICATION UNDER SECTION 113 OF THE ACT. WITHOUT MAKING ANY FINAL DETERMINATION ON THE MATTER WE ARE OF THE VIEW THAT SECTION 113 OF THE ACT CAN REASONABLY BE INTERPRETED TO ALLOW SUCH A COMBINATION OF COLLECTIVE AGREEMENTS TO FORM THE BASIS OF AN APPLICATION FOR ACCREDITATION. SINCE THE LANGUAGE OF THE STATUTE WILL REASONABLY BEAR THIS INTERPRETATION, WE WILL NOT DISMISS THE APPLICATION AT THIS STAGE ON THE GROUNDS OF THE BOARD HAVING NO JURISDICTION UNDER SECTION 113 OF THE ACT. HOWEVER, WE EMPHASIZE THAT THIS IS NOT A FINAL INTERPRETATION OF THE APPLICATION OF SECTION 113 IN THE PRESENT INSTANCE. IN THIS REGARD WE HAVE BEEN HAMPERED BY THE FACT THAT THE APPLICANT HAS NOT, TO DATE, FILED WITH THE BOARD THE COLLECTIVE AGREEMENTS UPON WHICH THE APPLICATION IS BASED.

6. THE REGISTRAR IS DIRECTED TO SERVE ALL OF THE KNOWN LOCALS OF THE PAINTERS UNION IN THE PROVINCE OF ONTARIO WITH NOTICE OF THIS APPLICATION. FURTHER, MR. H.C. DRAPER, EXAMINER, IS DIRECTED TO PROCEED WITH HIS APPOINTMENT DATED NOVEMBER 24, 1972, TO CONFER WITH THE PARTIES WITH RESPECT TO THE LISTS OF EMPLOYERS FILED HEREIN.

3404-72-U: WITOLD KORSACK (COMPLAINANT) v. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793, AND JOHN REDSHAW, UNION REPRESENTATIVE (RESPONDENTS).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS E. BOYER AND H.J.F. ADE.

APPEARANCES AT THE HEARING: WITOLD KORSACK FOR THE COMPLAINANT; J. REDSHAW AND H. A. HERRON FOR THE RESPONDENTS.

DECISION OF THE BOARD: JUNE 25, 1973.

1. THIS IS A COMPLAINT UNDER SECTION 79 OF THE LABOUR RELATIONS

ACT IN WHICH THE COMPLAINANT ALLEGES THAT HE HAS BEEN DEALT WITH CONTRARY TO SECTION 60 OF THE ACT. A FIELD OFFICER WAS APPOINTED AND, FOLLOWING HIS REPORT, THE MATTER WAS LISTED FOR HEARING TO SHOW CAUSE WHY THE BOARD SHOULD PROCEED TO INQUIRE FURTHER INTO THE COMPLAINT. AT THE HEARING THE COMPLAINANT APPEARED IN PERSON AND MADE HIS REPRESENTATIONS TO THE BOARD.

2. THE GIST OF THE COMPLAINT IS THAT THE UNION DISCRIMINATED AGAINST HIM AND KEPT HIM OUT OF REGULAR WORK FROM MARCH 18, 1971 TO MARCH 29, 1972. THE COMPLAINANT SEEKS COMPENSATION FOR WAGES LOST DURING THAT PERIOD OF TIME.

3. THE UNCONTESTED EVIDENCE ESTABLISHES THAT THE COMPLAINANT JOINED THE RESPONDENT UNION IN 1968. HE WAS PERMITTED TO GO ON REDUCED DUES FROM OCTOBER, 1970. COMMENCING IN MAY, 1971 HE FELL BEHIND IN HIS REGULAR DUES AND THE COMPLAINANT ADMITS THAT HE OWES BACK DUES TO THE UNION DURING THE PERIOD MAY, 1971 TO AND INCLUDING APRIL, 1972. THE COMPLAINANT WAS SUSPENDED BY THE RESPONDENT UNION IN JULY OF 1971 FOR FAILURE TO PAY DUES. ON MARCH 29, 1972 HE WAS ADVISED BY THE UNION THAT HE WOULD BE PERMITTED TO PAY HIS BACK DUES AT A REDUCED RATE. HE HAS NOT DONE SO. THE COMPLAINANT MAINTAINS THAT UNLESS THE UNION PROVIDES HIM WITH WORK HE IS IN NO POSITION TO PAY HIS BACK DUES.

4. IN ORDER TO SUCCEED ON A COMPLAINT ALLEGING A BREACH OF A DUTY OF FAIR REPRESENTATION UNDER SECTION 60 OF THE LABOUR RELATIONS ACT, THE COMPLAINANT MUST ESTABLISH THAT THE RESPONDENT TRADE UNION HAS ACTED IN A MANNER THAT IS ARBITRARY, DISCRIMINATORY OR IN BAD FAITH IN ITS DEALINGS WITH THE COMPLAINANT. THERE IS NO EVIDENCE TO SUGGEST THAT THE UNION ACTED IN AN ARBITRARY FASHION OR IN BAD FAITH. ON THE CONTRARY, IT IS CLEAR THAT THE UNION TENDED TO ACCOMMODATE THE COMPLAINANT BY PERMITTING HIM TO GO ON REDUCED DUES AT ONE STAGE AND THEN LATER GIVING HIM THE OPPORTUNITY OF PAYING HIS BACK DUES AT A REDUCED RATE.

5. THE COMPLAINANT, HOWEVER, MAINTAINS THAT HE HAS BEEN DISCRIMINATED AGAINST IN THAT THE RESPONDENT HAS NOT REFERRED HIM TO EMPLOYERS FOR WORK. IF WE ASSUME THAT THE RESPONDENT UNION DID NOT REFER HIM TO WORK, AND WE MAKE NO FINDING ON THIS POINT, CAN IT BE SAID THAT THE UNION HAS DISCRIMINATED AGAINST HIM? THERE IS EVIDENCE THAT PAID-UP MEMBERS OF THE UNION WERE REFERRED IN PRIORITY TO THOSE WHO WERE NOT PAID UP. THERE IS NO QUESTION THAT THE COMPLAINANT HAD FAILED TO MAINTAIN HIS DUES AND IN FACT WAS SUSPENDED AS A RESULT THEREOF. FURTHERMORE, THE COMPLAINANT CONCEDES THAT HE COULD NOT EXPECT TO BE REFERRED WHILE PAID-UP MEMBERS WERE OUT OF WORK. FURTHERMORE, THERE IS NO ALLEGATION AND NO SUGGESTION IN THE EVIDENCE OR MATERIALS BEFORE US THAT THE COMPLAINANT HAS BEEN TREATED DIFFERENTLY FROM ANY OTHER MEMBER WHO MAY HAVE LOST HIS GOOD STANDING AND BEEN SUSPENDED. THERE IS NO SUGGESTION THAT ANOTHER MEMBER IN A SIMILAR POSITION TO THAT OF THE COMPLAINANT WAS REFERRED OUT TO JOBS BY THE UNION. IN SUM, THERE IS NO EVIDENCE, IN OUR OPINION, WHICH IN ANY WAY SUPPORTS THE ALLEGATION OF DISCRIMINATION.

6. HAVING REGARD TO ALL THE ABOVE CONSIDERATIONS, THE COMPLAINANT

HAS FAILED TO PERSUADE US THAT THIS IS A CASE WHERE THE BOARD SHOULD INQUIRE FURTHER INTO THE COMPLAINT BY MEANS OF A FORMAL HEARING BY THE BOARD. IF THE COMPLAINANT IS OF THE OPINION THAT THE FACTS ARE NOT AS SET OUT ABOVE OR THAT THE BOARD HAS ERRED IN ANY OTHER WAY, IT IS ALWAYS OPEN TO THE COMPLAINANT TO ASK THE BOARD TO RECONSIDER ITS DECISION UNDER THE PROVISIONS OF SECTION 95, SUBSECTION (1) OF THE LABOUR RELATIONS ACT.

7. IN THE RESULT, THIS COMPLAINT IS DISMISSED.

3109-72-R: GENERAL TRUCK DRIVERS' UNION, LOCAL 938 AFFILIATED WITH TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. CANADIAN TANK LINES UNION (RESPONDENT) V. MUNICIPAL TANK LINES LIMITED (EMPLOYER) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS H. J. F. ADE AND E. BOYER.

APPEARANCES AT THE HEARING: A. E. GOLDEN APPEARING FOR THE APPLICANT AND THE RESPONDENT; F. R. VON VEH, M. DUBINSKY, Q.C., AND R. WASYLENKY APPEARING FOR THE EMPLOYER; AND M. GORDON APPEARING FOR THE OBJECTORS.

DECISION OF RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBER H. J. F. ADE: JUNE 22, 1973.

1. THE APPLICANT SEEKS A DECLARATION UNDER SECTION 54 OF THE ACT THAT IT HAS ACQUIRED THE RIGHTS, PRIVILEGES AND DUTIES OF CANADIAN TANK LINES UNION, THE RESPONDENT BY REASON OF A TRANSFER OF JURISDICTION. SECTION 54 READ AS FOLLOWS:

54.--(1) WHERE A TRADE UNION CLAIMS THAT BY REASON OF A MERGER OR AMALGAMATION OR A TRANSFER OF JURISDICTION IT IS THE SUCCESSOR OF A TRADE UNION THAT AT THE TIME OF THE MERGER, AMALGAMATION OR TRANSFER OF JURISDICTION WAS THE BARGAINING AGENT OF A UNIT OF EMPLOYEES OF AN EMPLOYER AND ANY QUESTION ARISES IN RESPECT OF ITS RIGHTS TO ACT AS THE SUCCESSOR, THE BOARD, IN ANY PROCEEDING BEFORE IT OR ON THE APPLICATION OF ANY PERSON OR TRADE UNION CONCERNED, MAY DECLARE THAT THE SUCCESSOR HAS OR HAS NOT, AS THE CASE MAY BE, ACQUIRED THE RIGHTS, PRIVILEGES AND DUTIES UNDER THIS ACT OF ITS PREDECESSOR, OR THE BOARD MAY DISMISS THE APPLICATION.



(2) BEFORE ISSUING A DECLARATION UNDER SUBSECTION 1, THE BOARD MAY TAKE SUCH INQUIRY, REQUIRE THE PRODUCTION OF SUCH EVIDENCE OR HOLD SUCH REPRESENTATION VOTE AS IT CONSIDERS APPROPRIATE.

(3) WHERE THE BOARD MAKES AN AFFIRMATIVE DECLARATION UNDER SUBSECTION 1, THE SUCCESSOR SHALL FOR THE PURPOSES OF THIS ACT BE CONCLUSIVELY PRESUMED TO HAVE ACQUIRED THE RIGHTS, PRIVILEGES AND DUTIES OF ITS PREDECESSOR, WHETHER UNDER A COLLECTIVE AGREEMENT OR OTHERWISE, AND THE EMPLOYER CONCERNED SHALL RECOGNIZE SUCH STATUS IN ALL RESPECTS. R.S.O. 1970, c. 232, s. 54.

2. CERTAIN EMPLOYEES OF THE EMPLOYER FILED STATEMENTS EXPRESSING OPPOSITION TO THE APPLICANT AND ADVISED THE BOARD THAT THEY DESIRE TO APPEAR AT THE HEARING.

3. THE STATEMENTS OF OBJECTIONS DID NOT SPECIFY THE GROUNDS UPON WHICH THE OBJECTION WAS BASED. AT THE HEARING IT APPEARED FROM WHAT WAS SAID THAT THE CHIEF GROUNDS RELIED UPON WAS THE FAILURE TO GIVE PROPER NOTICE OF THE MEETING AT WHICH THE VOTING TOOK PLACE.

4. THE EMPLOYER TOOK THE POSITION THAT THE APPLICANT MUST SATISFY THE BOARD THAT A PROPER TRANSFER OF JURISDICTION HAS BEEN EFFECTED PURSUANT TO THE CONSTITUTION OF THE CANADIAN TANK LINES UNION, BEARING IN MIND THE RELEVANT JURISPRUDENCE IN REGARD TO CASES OF THIS NATURE.

5. THE RESPONDENT IS A TRADE UNION WITHIN THE MEANING OF THE ACT AND WAS CERTIFIED BY THE BOARD AS BARGAINING AGENT FOR ALL EMPLOYEES OF MUNICIPAL TANK LINES WITH CERTAIN EXCEPTIONS NOT HERE RELEVANT, ON OCTOBER 6TH, 1967. (THE SUDBURY PUBLIC SCHOOL BOARD CASE, OLRB, M.R., MAY 1964, P. 96; GULF OIL CANADA LIMITED CASE, OLRB M.R., FEBRUARY 1970, P. 1380).

6. THERE IS IN EXISTENCE A COLLECTIVE AGREEMENT BETWEEN CANADIAN TANK LINES UNION, THE RESPONDENT HEREIN, AND MUNICIPAL TANK LINES LIMITED, THE EMPLOYER HEREIN. THE AGREEMENT IS DATED JANUARY 18TH, 1972, TO REMAIN IN FULL FORCE AND EFFECT UNTIL MARCH 31ST, 1974 AND FROM YEAR TO YEAR THEREAFTER SUBJECT TO NOTICE.

7. THE CONSTITUTION OF THE RESPONDENT WAS FILED WITH THE BOARD. IT PROVIDES, IN PART, AS FOLLOWS:

#### ARTICLE 4 - STATUS OF CONSTITUTION

THIS CONSTITUTION SHALL REPRESENT, IN PERMANENT FORM, THE HIGHEST EXPRESSION OF THE COLLECTIVE WILL OF THE MEMBERSHIP OF THIS ORGANIZATION, AND SHALL BE AND REMAIN THE BASIS UPON WHICH THE ASSOCIATION SHALL FUNCTION. ANY DECISION OR ACT TAKEN IN THE NAME OF THIS ORGANIZATION WHICH IS CONTRARY TO ANY PROVISION OF THIS CONSTITUTION SHALL BE NULL AND VOID AND WITHOUT EFFECT.

#### ARTICLE 5 - AMENDMENT OF CONSTITUTION

- (A) THIS CONSTITUTION MAY BE AMENDED IN ACCORDANCE WITH THE FOLLOWING PROCEDURE:
- (1) A MEMBER DESIRING AN AMENDMENT SHALL PRESENT, AT A REGULAR MEETING OF THE ASSOCIATION, A NOTICE OF MOTION SETTING FORTH THE PROPOSED CHANGE. THE NOTICE OF MOTION SHALL BE GIVEN ORALLY TO THE ASSEMBLY AND IN WRITING TO THE CHAIRMAN AND IT SHALL BE RECORDED IN THE MINUTES OF THE MEETING.
  - (2) THE NOTICE OF MOTION SHALL BE INCLUDED IN THE OFFICIAL NOTICE OF THE NEXT REGULAR MEETING, AS PART OF ITS AGENDA.
  - (3) AT THE REGULAR MEETING IMMEDIATELY SUBSEQUENT TO THE MEETING AT WHICH THE NOTICE OF MOTION WAS GIVEN, THE MEMBER WHO TENDERED IT SHALL PRESENT HIM MOTION, ORALLY TO THE ASSEMBLY AND IN WRITING TO THE CHAIRMAN, WHO SHALL CAUSE IT TO BE RECORDED IN THE MINUTES OF THE MEETING. THE MOTION MAY BE CONSIDERED BY THE ASSEMBLY ONLY AFTER IT HAS BEEN SECONDED BY TWO (2) OTHER MEMBERS, FAILING WHICH IT SHALL BE NEITHER DISCUSSED NOR

VOTED UPON. A MOTION TO AMEND THIS CONSTITUTION SHALL NOT PASS UNLESS IT RECEIVES IN ITS FAVOUR A TWO-THIRDS MAJORITY VOTE OF MEMBERS IN ATTENDANCE AT THE MEETING. (EMPHASIS ADDED.)

- (4) AN AMENDMENT ARRIVED AT IN THE ABOVE MANNER SHALL TAKE EFFECT IMMEDIATELY, SUBJECT TO THE PROVISIONS OF ARTICLE 16, PARAGRAPHS (A) AND (B), ATTACHED HERETO.
- (B) A MEMBER OF THE UNION WHO IS EMPLOYED AT A BRANCH OTHER THAN THE EMPLOYER'S HEAD OFFICE BRANCH MAY SERVE NOTICE OF MOTION FOR AN AMENDMENT TO THIS CONSTITUTION AT A MEETING OF HIS BRANCH IN THE MANNER SET FORTH IN PARAGRAPH (A), SUB-PARAGRAPH (1) OF THIS ARTICLE. THE CHAIRMAN OF THE BRANCH MEETING SHALL FORTHWITH CAUSE THE NOTICE OF MOTION TO BE FORWARDED TO THE PRESIDENT OF THE UNION AND IT SHALL BE DEALT WITH IN THE SAME MANNER AS THOUGH IT HAD BEEN GIVEN AT A MEETING OF THE HEAD OFFICE BRANCH OF THE UNION.

#### ARTICLE 6 - ADMINISTRATION

- (A) SUPREME AUTHORITY IN THE MANAGEMENT OF THE AFFAIRS OF THIS ORGANIZATION IS VESTED IN ITS MEMBERS AS A WHOLE AND SHALL BE LIMITED ONLY BY THE PROVISIONS OF THIS CONSTITUTION.

#### ARTICLE 12 - MEETINGS

- (B) SEVEN (7) MEMBERS IN ATTENDANCE AT A REGULAR OR SPECIAL MEETING SHALL CONSTITUTE A QUORUM FOR THE TRANSACTION OF BUSINESS THEREAT.
- (D) A SPECIAL MEETING OF THE MEMBERSHIP MAY BE ORDERED BY THE PRESIDENT AND/OR EXECUTIVE BOARD TO DEAL WITH ANY URGENT BUSINESS. ANY FIVE (5) MEMBERS WHO DESIRE A SPECIAL MEETING MAY PRESENT TO THE PRESIDENT THEIR WRITTEN REQUEST



FOR SUCH A MEETING AND THE PRESIDENT SHALL DIRECT THAT THE MEETING BE HELD AS PROMPTLY AS PREVAILING CIRCUMSTANCES ALLOW.

#### ARTICLE 16 - GENERAL

- (B) NO QUESTION OR ISSUE WHICH IS OF CONCERN AND APPLICATION TO THE UNION AS A WHOLE SHALL BE DEEMED TO BE SETTLED UNTIL ALL MEMBERS, WHEREVER EMPLOYED, SHALL HAVE HAD REASONABLE OPPORTUNITY TO SPEAK AND TO VOTE ON IT.

#### ARTICLE 17 - DISSOLUTION

- (A) THIS ORGANIZATION MAY BE DISSOLVED ONLY AT A SPECIAL MEETING OF ITS MEMBERS, CONVENED FOR SUCH PURPOSE, BY A TWO-THIRDS MAJORITY VOTE OF THE MEMBERS ATTENDING SAME. NOTICE OF SUCH MEETING SHALL BE GIVEN IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE 12 OF THIS CONSTITUTION.

8. WITHOUT FURTHER COMMENT AT THIS JUNCTURE, THE BOARD NOTES THAT THE CONSTITUTION OF THE RESPONDENT DOES NOT SPECIFICALLY PROVIDE FOR TRANSFER OF JURISDICTION, NEITHER DOES IT SPEAK OF AMALGAMATION OR MERGER, THE OTHER TWO MATTERS DEALT WITH IN SECTION 54. IT DOES HOWEVER, PROVIDE FOR DISSOLUTION AND FOR ITS OWN AMENDMENT. THESE ARE IMPORTANT CONSIDERATIONS IN A MATTER OF THIS KIND TO WHICH IT MAY BE NECESSARY TO RETURN LATER (ASTGEN V. SMITH ET AL 69 CLLC, PARA. 14,198.).

9. AS ALREADY NOTED THE FORMAL APPLICATION FILED IN THIS MATTER REFERS TO A TRANSFER OF JURISDICTION.

IN THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO CASE 57 CLLC #18,080 THE NATIONAL UNION OF PUBLIC SERVICE EMPLOYEES C.L.C. (NUPSE) APPLIED FOR A DECLARATION OF SUCCESSOR STATUS TO THE ONTARIO HYDRO EMPLOYEES UNION, THE PREDECESSOR HOLDING BARGAINING RIGHTS FOR THE EMPLOYEES AFFECTED. NUPSE SOUGHT TO BARGAIN WITH THE EMPLOYER UPON EXPIRY OF THE AGREEMENT WITH A VIEW TO RENEWAL. THE EMPLOYER WAS NOT SATISFIED THAT THE SUCCESSOR WAS ENTITLED TO BARGAIN ON BEHALF OF THE AFFECTED EMPLOYEES."

THE QUESTION PUT TO EMPLOYEES FOR A VOTE

AT A MEETING DULY CALLED FOR PURPOSES OF EFFECTING A MERGER WITH NUPSE WAS:

"ARE YOU IN FAVOUR OF AFFILIATION WITH THE CANADIAN CONGRESS OF LABOUR BY MEANS OF A MERGER WITH NUPSE...?"

THE ISSUE WAS WHETHER IN FACT THE RESULTS OF THE VOTE TRULY REFLECTED A DESIRE TO MERGE WITH THE SUCCESSOR (AND THEREBY CHANGE BARGAINING AGENTS) OR WHETHER THE INTENTION WAS MERELY TO AFFILIATE WITH THE C.L.C. THROUGH THE AUSPICES OF NUPSE (AND THEREBY RETAIN A SEPARATE AND DISTINCT IDENTITY). IN ORDER TO ARRIVE AT A DECISION THE BOARD EMBARKED UPON AN ATTEMPT TO DEFINE WHAT WAS MEANT BY "MERGER, AMALGAMATION OR TRANSFER OF JURISDICTION" (AT P. 1654):

"MERGER IS DEFINED IN BOUVIER'S LAW DICTIONARY AS 'THE ABSORPTION OF A THING OF LESSER IMPORTANCE BY A GREATER, WHEREBY THE LESSER CEASES TO EXIST BUT THE GREATER IS NOT INCREASED; 'AMALGAMATION' IS THERE DEFINED AS THE UNION OF DIFFERENT... SOCIETIES, SO AS TO FORM A HOMOGENEOUS WHOLE OR NEW BODY.'" IN TRADE UNION CIRCLES, THE TERMS MERGER AND AMALGAMATION ARE FREQUENTLY USED INTERCHANGEABLY. A TRANSFER OF JURISDICTION TAKES PLACE WHEN ONE PARENT BODY ASSIGNS CONTROL OVER ONE OF ITS SUBORDINATE BRANCHES OR LODGES TO ANOTHER PARENT BODY." (EMPHASIS ADDED.)

SINCE THE TRANSACTION INVOLVING THE TWO TRADE UNION PARTIES DID NOT FALL INTO ANY ONE OF THESE CATEGORIES THE BOARD WAS NOT DISPOSED TO MAKE A DECLARATION OF SUCCESSOR STATUS; RATHER, IT DETERMINED THAT THE NATURE OF THE TRANSACTION WAS ONE OF AFFILIATION - A MATTER NOT COVERED BY THE RELEVANT SECTION OF THE ACT.

10. THE DISTINCTION DRAWN BY THE BOARD BETWEEN THE TERMS USED IN SECTION 54 IS OF PARTICULAR CONCERN HERE. IT WAS THE APPLICANT'S POSITION THAT THE CHOICE OF THE TERM "TRANSFER OF JURISDICTION" HAD BEEN DELIBERATE AND HAD BEEN TAKEN IN THE BELIEF THAT SUCH A TRANSACTION FELL OUTSIDE THE ORBIT OF THE ASTGEN CASE AND THE QUESTION OF UNION CONSTITUTIONAL POWERS DEALT WITH THEREIN.

11. THE EVIDENCE INDICATES THAT A MEETING OF THE APPLICANT UNION TOOK PLACE ON OR ABOUT OCTOBER 28TH OR 29TH, 1972. MINUTES OF THAT MEETING FILED WITH THE BOARD (EXHIBIT 8) RECORD (ITEM 6) THAT IT WAS RESOLVED THAT THE UNION COMMITTEE WOULD CONTACT A REPRESENTATIVE OF THE TEAMSTERS AND DISCUSS POSSIBILITIES AND METHODS OF JOINING THE TEAMSTERS.

12. FOLLOWING THE RESOLUTION, A MEETING WAS ARRANGED WITH REPRESENTATIVES OF THE TEAMSTERS WHERE THE FORMALITIES OF "GOING TO THE TEAMSTERS" WERE DISCUSSED.

13. AS A RESULT OF THE MEETING WITH THE TEAMSTERS, A NOTICE OF A SPECIAL MEETING WAS PREPARED AND DISTRIBUTED. THE NOTICE WAS IN THE FOLLOWING FORM:

CANADIAN TANK LINES UNION

---

N O T I C E

OF

SPECIAL MEETING

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TAKE NOTICE THAT THE PRESIDENT,  
PURSUANT TO THE UNION'S CONSTITUTION HEREBY  
CALLS A SPECIAL MEETING OF ALL MEMBERS OF  
THE CANADIAN TANK LINES UNION, LOCAL 32 AND  
33, TO BE HELD AT ERINDALE HALL, 1620 DUNDAS  
STREET WEST, ERINDALE, ONTARIO, AT 12 NOON,  
ON SUNDAY, THE 26TH DAY OF NOVEMBER, 1972.

THE BUSINESS TO BE DISCUSSED IS THE  
RECOMMENDATION OF THE EXECUTIVE BOARD THAT  
THE CANADIAN TANK LINES UNION TRANSFER ITS  
JURISDICTION TO THE GENERAL TRUCK DRIVERS'  
UNION, LOCAL 938, IN ALL MATTERS RELATING  
TO ITS COLLECTIVE AGREEMENT WITH MUNICIPAL  
TANK LINES LIMITED.

A MOTION WILL BE PLACED BEFORE THE  
MEETING THAT THE EXECUTIVE BOARD BE EMPOWERED  
TO TRANSMIT ALL NECESSARY BUSINESS TO ENSURE  
THAT THE UNION'S JURISDICTION IS PROPERLY  
TRANSFERRED TO THE GENERAL TRUCK DRIVERS'  
UNION, LOCAL 938.



IT IS TO BE OBSERVED THAT THE NOTICE REFERS TO A TRANSFER OF JURISDICTION.

14. ON NOVEMBER 27TH THE SPECIAL MEETING CAME TO ORDER AT 12:35 P.M. THE MINUTES OF THIS MEETING WERE FILED WITH THE BOARD (EXHIBIT 6).

15. THE MOTION PUT AND VOTED UPON AS RECORDED IN THE MINUTES, WAS NOT HOWEVER FOR A TRANSFER OF JURISDICTION TO, BUT FOR AFFILIATION WITH LOCALS 938 AND 880 OF THE TEAMSTERS.

16. THE BALLOTS USED DID NOT SET OUT THE MOTION AND WERE MARKED WITH A SIMPLE "YES" OR "NO". INCIDENTALLY, THE MOTION, AS INDICATED BY THE MINUTES, WAS CARRIED 28 TO 19 OUT OF A TOTAL OF 47 BALLOTS CAST. THIS IS, OF COURSE, BY LESS THAN A MAJORITY OF TWO-THIRDS OF THE MEMBERS ATTENDING THE MEETING.

17. IT MIGHT BE SAID HERE THAT IF THE INTENTION OF THE VOTERS WAS TO AFFILIATE, AS THE MOTION WAS PUT, THEN THAT IS NOT A TRANSACTION CONCERNING WHICH A DECLARATION MAY BE MADE UNDER SECTION 54.

18. IF, ON THE OTHER HAND, THE MOTION BE ASSUMED TO ACTUALLY INTEND A TRANSFER OF JURISDICTION NOTWITHSTANDING THE CLEAR REFERENCE TO AFFILIATION, REGARD MUST BE HAD FOR THE DEFINITION OF TRANSFER OF JURISDICTION CONTAINED IN THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO CASE CITED ABOVE. THE DEFINITION, TO REPEAT IT, STATES THAT A TRANSFER OF JURISDICTION TAKES PLACE WHEN ONE PARENT BODY ASSIGNS CONTROL OVER ONE OF ITS SUBORDINATE BRANCHES OR BODIES TO ANOTHER PARENT BODY. THE ATTEMPTED TRANSACTION UNDER REVIEW HERE DOES NOT CONFORM TO THE DEFINITION. HERE, THE APPLICANT HAS NO LOCAL OR LODGE AND IN A SENSE MIGHT BE REGARDED AS A PARENT. THE WOULD-BE SUCCESSORS ARE TWO LOCALS OF THE TEAMSTERS UNION RATHER THAN THE TEAMSTERS UNION. THE "TRANSFER OF JURISDICTION" OF THE APPLICANT WOULD MEAN ITS ABSORPTION IF POSSIBLE, INTO TWO LOCALS OF THE TEAMSTERS, A MATTER AGAIN, IF POSSIBLE OF ACCOMPLISHMENT, SEEMINGLY MORE AKIN TO MERGER OR AMALGAMATION THAN A TRANSFER OF JURISDICTION WITHIN THE DEFINITION ADOPTED BY THE BOARD.

19. WITH REGARD TO THE LATTER, THE APPLICANT TOOK THE FIRM POSITION THAT THE PROCEDURE BY WAY OF MERGER OR AMALGAMATION HAD BEEN DELIBERATELY REJECTED IN ORDER TO AVOID PROBLEMS THAT MIGHT ARISE BY VIRTUE OF THE PROVISIONS OR LACK THEREOF IN THE APPLICANT'S CONSTITUTION GOVERNING SUCH A STEP.

20. HAVING REGARD TO THE FOREGOING, THE BOARD FINDS THAT THE TRANSACTION DESCRIBED IN THE EVIDENCE IS NOT A TRANSFER OF JURISDICTION WITHIN THE MEANING OF THE ACT AND THE APPLICATION IS ACCORDINGLY DISMISSED.

DISSENT OF BOARD MEMBER E. BOYER: JUNE 22, 1973.

I DISSENT. HAVING REGARD TO ALL OF THE EVIDENCE, IT IS PLAIN TO ME THAT THE MEMBERS OF THE APPLICANT WANT THE TEAMSTERS TO ACT AS THEIR

BARGAINING AGENT. I DO NOT BELIEVE THAT THE MATTER SHOULD HINGE UPON ANY TECHNICAL DEFECTS AND WOULD DIRECT THAT THE MATTER BE RESOLVED BY A REPRESENTATION VOTE.

3465-72-R: WELLAND TYPOGRAPHICAL UNION No. 927 (APPLICANT) V. THE EVENING TRIBUNE (RESPONDENT).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS P. J. O'KEEFE AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: A. HISTED, A. HERITAGE AND R. EARLES FOR THE APPLICANT; C. A. MORLEY, AND A. S. TOPP FOR THE RESPONDENT.

DECISION OF VICE-CHAIRMAN FRANK V. BOSCARIOL, AND BOARD MEMBER P. J. O'KEEFE: JUNE 22, 1973.

. . .

2. IN THIS APPLICATION FOR CERTIFICATION, THE APPLICANT IS SEEKING A BARGAINING UNIT COMPOSED OF ALL PROOF-READERS REGULARLY EMPLOYED BY THE RESPONDENT FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK.

3. THE RESPONDENT OPPOSES THIS APPLICATION ON THE BASIS THAT THESE PART-TIME PROOF-READERS ARE NOT ELIGIBLE FOR MEMBERSHIP IN THE APPLICANT HAVING REGARD TO THE PROVISIONS OF ITS CONSTITUTION WHICH LIMITS MEMBERSHIP TO JOURNEYMEN AND APPRENTICES. APART FROM THE STRICT CONSTITUTIONAL RESTRICTIONS ALLEGEDLY PRECLUDING THE ADMISSION INTO MEMBERSHIP OF THE EMPLOYEES IN THE PROPOSED BARGAINING UNIT, THE RESPONDENT FURTHER CONTENDS THAT THE APPLICANT CANNOT PROPERLY BARGAIN ON BEHALF OF THESE PROOF-READERS SINCE ITS JURISDICTION IS LIMITED TO SKILLED CRAFT EMPLOYEES (VIZ. JOURNEYMEN AND APPRENTICES) WITHIN "THE PRINTING AND KINDRED TRADES."

4. HAVING REGARD TO THE TOTALITY OF THE EVIDENCE ADDUCED THE BOARD IS SATISFIED THAT A PAST PRACTICE HAS BEEN ESTABLISHED WITHIN THE MEANING OF SECTION 92(4) OF THE ACT OF ADMITTING INTO MEMBERSHIP PERSONS OTHER THAN JOURNEYMEN AND APPRENTICES CONTRARY TO THE STRICT ELIGIBILITY PROVISIONS AS SET OUT IN THE CONSTITUTION. ACCORDINGLY, WE FIND THAT THE APPLICANT MAY PROPERLY ADMIT INTO MEMBERSHIP THE PART-TIME PROOF-READERS AND BARGAIN ON THEIR BEHALF.

. . .

8. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER J.E.C. ROBINSON, Q.C.: JUNE 22, 1973.

HAVING REGARD TO THE EXPRESS PROHIBITIONS IN THE APPLICANT'S CONSTITUTION DENYING MEMBERSHIP TO PERSONS SUCH AS THOSE APPLIED FOR BY THE APPLICANT, AND HAVING REGARD TO THE FACT THAT THE UNION HAS NOT A

PAST PRACTICE BEFORE THIS BOARD OF ADMITTING INTO MEMBERSHIP PART-TIME PROOF-READERS, I WOULD FIND THAT THE APPLICANT IS UNABLE TO ADMIT INTO MEMBERSHIP SUCH PERSONS WITHIN THE PROVISIONS OF SECTION 92(4) OF THE LABOUR RELATIONS ACT. INDEED IT IS BEYOND MY COMPREHENSION HOW THE APPLICANT WILL FAIRLY REPRESENT SUCH PERSONS, AS IT HAS A DUTY TO DO, WHEN SUCH PERSONS ARE EXPRESSLY INELIGIBLE FOR MEMBERSHIP WITHIN THE MEANING OF THE APPLICANT'S CONSTITUTION.

I WOULD ACCORDINGLY DISMISS THE APPLICATION.

3277-72-R: CANADIAN FOOD AND ALLIED WORKERS, LOCAL UNION 175 CHARTERED BY THE AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA (APPLICANT) V. DARRIGO'S FOOD MARKETS ONT. LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND O. HODGES.

APPEARANCES AT THE HEARING: H. F. CALEY AND J. O'DONNELL FOR THE APPLICANT; M. G. MITCHNICK, J. DARRIGO AND G. FEBBO FOR THE RESPONDENT; NO ONE APPEARING FOR THE OBJECTORS.

DECISION OF VICE-CHAIRMAN FRANK V. BOSCARIOL AND BOARD MEMBER O. HODGES: JUNE 25, 1973.

1. PURSUANT TO THE DECISION OF THE BOARD DATED APRIL 25, 1973, THIS MATTER WAS LISTED FOR CONTINUATION OF HEARING TO ENABLE THE APPLICANT TO ADDUCE EVIDENCE IN SUPPORT OF ITS CHARGES AS SET OUT IN ITS LETTER DATED FEBRUARY 27, 1973, REQUESTING THAT THE BOARD EXERCISE ITS DISCRETION PURSUANT TO SECTION 7(4) OF THE LABOUR RELATIONS ACT AND CERTIFY THE APPLICANT OUTRIGHT WITHOUT THE TAKING OF A REPRESENTATION VOTE.

2. IN THE TWO PRIOR APPLICATIONS INVOLVING THE FULL-TIME AND MEAT DEPARTMENT EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES IN METROPOLITAN TORONTO, (SEE BOARD FILE NO. 3280-72-R AND BOARD FILE NO. 3274-72-R, RESPECTIVELY), THIS BOARD IN ITS DECISIONS DATED MARCH 26, 1973, WAS NOT PREPARED TO ACCEPT THE PETITIONS AS REPRESENTING A VOLUNTARY EXPRESSION OF THE DESIRES OF THE RESPECTIVE SIGNATORIES THEREIN SO AS TO CAUSE THE BOARD TO SEEK THE CONFIRMATORY ORDER OF A REPRESENTATION VOTE. CONSEQUENTLY, THE APPLICANT WAS, ON THE BASIS OF THE RESPECTIVE COUNTS, CERTIFIED IN BOTH OF THESE APPLICATIONS. HAVING REGARD TO THE TOTALITY OF THE EVIDENCE AS ADDUCED, WE ARE SATISFIED THAT HAD THE PETITIONS BEEN "RELEVANT" TO THIS APPLICATION, WE WOULD LIKEWISE HAVE GIVEN NO WEIGHT TO THESE DOCUMENTS AS REPRESENTING A VOLUNTARY EXPRESSION OF THE DESIRES OF THE EMPLOYEES SUBJECT TO THIS APPLICATION (VIZ. THE PART-TIME UNIT) IN THE LIGHT OF THE RESPONDENT'S ACTIVE INVOLVEMENT IN THIS RESPECT. HOWEVER, THE APPLICANT IN THIS APPLICATION DID NOT OBTAIN EVIDENCE OF MEMBERSHIP ON BEHALF OF MORE THAN SIXTY-FIVE PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT, BUT HAVING ACQUIRED MORE THAN FIFTY PER CENT MEMBERSHIP, NOW SEEKS OUTRIGHT CERTIFICA-



TION ON THE BASIS THAT THE TRUE WISHES OF THE EMPLOYEES ARE NOT LIKELY TO BE DISCLOSED BY A REPRESENTATION VOTE.

3. THE RESPONDENT SUBMITS THAT WHILE THE RESPONDENT'S CONDUCT IN THE CIRCUMSTANCES IS SUFFICIENT TO VITIATE OR INVALIDATE THE PETITIONS, SUCH OBJECTIONABLE ACTIVITY ON ITS PART CAN GO NO FURTHER AND COULD NOT REASONABLY BE SAID TO PREVENT THE TRUE WISHES OF THE EMPLOYEES FROM BEING EXPRESSED AND BE CARRIED OVER TO A SECRET BALLOT CAST IN A REPRESENTATION VOTE.

4. HAVING REGARD TO THE TOTALITY OF THE EVIDENCE AS ADDUCED, THE MAJORITY OF THIS BOARD REJECTS THE SUBMISSIONS OF THE RESPONDENT, AND IN REACHING OUR CONCLUSION THAT THE TRUE WISHES OF THE EMPLOYEES WOULD NOT LIKELY BE DISCLOSED IN A REPRESENTATION VOTE, WE HAVE GIVEN SPECIAL CONSIDERATION TO THE FOLLOWING FACTORS:

- A) THE BARGAINING UNIT IS GENERALLY COMPOSED OF YOUNG AND INEXPERIENCED STUDENTS EMPLOYED ON A PART-TIME BASIS AND IN THE CIRCUMSTANCES OF THIS CASE, PARTICULARLY SUSCEPTIBLE AND RESPONSIVE TO THE VIEWS OF THEIR EMPLOYER, THE RESPONDENT.
- B) THE RESPONDENT HAS DRAMATICALLY AND CLEARLY MADE KNOWN TO THESE EMPLOYEES ITS VIEWS OPPOSING THE APPLICANT, NOT THROUGH AN ISOLATED INSTANCE, BUT RATHER AS A RESULT OF A SUSTAINED PATTERN OF CONDUCT WHICH INCLUDED LAY-OFFS OF CERTAIN OF THE EMPLOYEES THROUGHOUT ITS STORES AND THE ACTIVE PARTICIPATION BY CERTAIN OF ITS MANAGERS IN THE ORIGINATION, PREPARATION AND CIRCULATION OF THE PETITIONS. FURTHER, THE EVIDENCE IS THAT SEVERAL OF THESE EMPLOYEES SIGNED THE PETITIONS AGAINST THEIR WILL.
- C) CONCURRENT WITH THE APPLICANT'S CAMPAIGN, THE RESPONDENT GRANTED WAGE INCREASES AND VARIOUS OTHER IMPROVEMENTS IN WORKING CONDITIONS TO THE EMPLOYEES WHILE AT APPROXIMATELY THE SAME TIME INDICATING TO THESE EMPLOYEES THAT UNIONIZATION COULD RESULT IN EVEN HIGHER SALARIES, NECESSITATING A REDUCTION IN THE NUMBER OF EMPLOYEES, ESPECIALLY IN RELATION TO THE PART-TIME EMPLOYEES.

5. IN THE RESULT, WE ARE SATISFIED THAT THE CUMULATIVE EFFECT OF THE RESPONDENT'S CONDUCT WAS SUFFICIENTLY COERCIVE AND INTIMIDATING SO AS TO EFFECTIVELY DESTROY THE ABILITY OF THESE IMPRESSIONABLE EMPLOYEES TO MAKE A FREE CHOICE IN THE CIRCUMSTANCES. IN OUR OPINION, THESE ACTIONS ON THE PART OF THE RESPONDENT HAVE LEFT AN INDELIBLE MARK UPON THE MINDS OF THESE EMPLOYEES WHICH CANNOT BE DISSIPATED OR ERASED BY THE PASSAGE OF TIME, NOR AS SUGGESTED BY THE RESPONDENT, BE DISPELLED BY SUBSEQUENT EVENTS

SUCH AS THE REINSTATEMENT AND COMPENSATION BY THE RESPONDENT OF THE EMPLOYEES WHICH HAD BEEN LAID OFF, OR BY THE CERTIFICATION OF THE APPLICANT ON BEHALF OF THE EMPLOYEES IN THE TWO OTHER BARGAINING UNITS AS SET OUT IN PARAGRAPH #2 HEREIN.

6. WE FURTHER FIND THAT THE CHARGES AS FILED BY THE RESPONDENT DURING THE COURSE OF THESE PROCEEDINGS, EVEN IF FOUND TO BE TIMELY AND RELEVANT, WERE NOT PROVEN TO OUR SATISFACTION, HAVING REGARD TO THE NATURE OF THE EVIDENCE AS ADDUCED AND THEREFORE CAN BE GIVEN NO WEIGHT.

7. THE BOARD THEREFORE IN THE EXERCISE OF ITS DISCRETION PURSUANT TO THE PROVISIONS OF SECTION 7(4) OF THE ACT, FINDS THAT THE APPLICANT HAS ESTABLISHED ITS ENTITLEMENT TO OUTRIGHT CERTIFICATION WITHOUT THE TAKING OF A REPRESENTATION VOTE.

8. A CERTIFICATE WILL ISSUE TO THE APPLICANT ON BEHALF OF THE EMPLOYEES ENCOMPASSED IN THE BARGAINING UNIT AS DEFINED IN THE INITIAL DECISION OF THE BOARD IN THIS MATTER DATED MARCH 2, 1973.

DECISION OF BOARD MEMBER J.D. BELL: JUNE 25, 1973.

I DO NOT AGREE WITH THE MAJORITY OF THE BOARD THAT THE TRUE WISHES OF THE EMPLOYEES ARE NOT LIKELY TO BE DISCLOSED BY A REPRESENTATION VOTE.

PARAGRAPH 2 OF THE MAJORITY DECISION STATES THAT THIS BOARD FOUND THAT THE RESPONDENTS ACTIVE INVOLVEMENT IN THE PETITIONS CAST DOUBT THAT THEY REPRESENTED A VOLUNTARY EXPRESSION OF DESIRE AND GAVE NO WEIGHT TO THE PETITIONS IN THE TWO APPLICATIONS INVOLVING THE FULL TIME AND THE MEAT DEPARTMENT EMPLOYEES. NOR WOULD THEY GIVE WEIGHT TO THE PETITIONS IN THIS APPLICATION. WITH THIS I AGREE.

THESE DECISIONS WERE MADE ON EVIDENCE GIVEN OF ACTIONS WHICH OCCURRED IN FEBRUARY 1973. THE PERIOD JUST BEFORE AND SHORTLY AFTER THE APPLICATION WAS FILED ON FEBRUARY 14TH, 1973.

THE EVIDENCE NOW SUBMITTED BY THE APPLICANT IN SUPPORT OF THIS APPLICATION IS BASICALLY THE SAME AND THE FACTS COVER THE SAME TIME PERIOD.

IN THE IRVINE AND FRANCIS LIMITED CASES, ONTARIO LABOUR RELATIONS BOARD MONTHLY REPORT, AUGUST 1969, AT PAGE 622, PARAGRAPH 13 AND 14 THE BOARD FOUND:

"13. ON ALL THE EVIDENCE IN THIS CASE, WE HAVE FOUND THAT MANAGEMENT'S PARTICIPATION DESTROYED THE EVIDENTIARY VALUE OF THE PETITIONS AS REPRESENTING A FREE EXPRESSION OF THE TRUE WISHES OF THE EMPLOYEES. MANAGEMENT'S PARTICIPATION IN THE CIRCULATION OF THE PETITIONS MAY BE DESCRIBED AS AN UNLAWFUL INTERFERENCE WITH

THE EMPLOYEES' SELECTION OF A TRADE UNION CONTRARY TO SECTION 48 OF THE ACT. HOWEVER, WHILE THE ACTIONS OF MANAGEMENT DESCRIBED ABOVE MAY BE CHARACTERIZED AS UNDUE INFLUENCE, NO ACTIVE COERCION, INTIMIDATION, THREATS OR PROMISES WERE USED BY MANAGEMENT.

14. ALTHOUGH THE EMPLOYER'S ACTIVITIES WOULD INDICATE TO HIS EMPLOYEES THAT THE EMPLOYER DID NOT WISH TO BARGAIN WITH THEM THROUGH A CERTIFIED BARGAINING AGENT, IT MUST BE RECOGNIZED THAT EMPLOYERS GENERALLY DO NOT BELIEVE THAT IT IS TO THE EMPLOYER'S ADVANTAGE AND IT IS A VERY RARE EMPLOYER INDEED WHO WOULD WELCOME THIS SITUATION. THE OBJECTIONABLE ACTIVITY WOULD TEND TO HAVE A DIRECT EFFECT ON AN INDIVIDUAL EMPLOYEE SINCE HIS OPPOSITION TO OR SUPPORT FOR THE UNION WOULD BE MADE KNOWN TO THE EMPLOYER WHEN HE SIGNED OR REFUSED TO SIGN THE PETITION. HOWEVER, SUCH EFFECT COULD NOT REASONABLY BE SAID TO CARRY OVER TO A SECRET BALLOT CAST IN A REPRESENTATION VOTE SINCE THE EMPLOYER WOULD NOW KNOW HOW HE VOTED. THE MERE FACT THAT AN EMPLOYER INDICATED THAT HE WAS NOT ANXIOUS TO HAVE A UNION REPRESENT HIS EMPLOYEES WOULD NOT DESTROY THE RESULTS OF A REPRESENTATION VOTE. AN EMPLOYER IS PERMITTED TO EXPRESS SUCH VIEWS BY SECTION 48 OF THE LABOUR RELATIONS ACT. WE ARE HEREOFRE NOT PREPARED TO FIND THAT THE EMPLOYER'S ACTIVITY AS DESCRIBED ABOVE, IN THE ABSENCE OF COERCION, INTIMIDATION, THREATS OR PROMISES, WOULD TEND TO PREVENT THE TRUE WISHES OF THE EMPLOYEES BEING DISCLOSED IN A REPRESENTATION VOTE."

I DO NOT THINK THAT THE ACTIONS OF MANAGEMENT IN FEBRUARY SHOULD BE CONSIDERED COERCION, INTIMIDATION, THREATS OR PROMISES. ANY IMPACT OF THESE ACTIONS HAS BEEN NULLIFIED BY SUBSEQUENT EVENTS AND THE PASSAGE OF TIME AND THE QUESTION IS PURELY ACADEMIC NOW SOME FOUR MONTHS LATER.

I FURTHER BELIEVE THAT THIS BARGAINING UNIT, MOSTLY YOUNG STUDENTS, WOULD NOT BE PARTICULARLY SUSCEPTIBLE TO THE VIEWS OF THE RESPONDENT TO ANY GREATER DEGREE THAN THEY WOULD BE TO THE VIEWS OF THE APPLICANT.

ACCORDINGLY, I WOULD DIRECT A REPRESENTATION VOTE BE TAKEN IN ACCORDANCE WITH SECTION 7(2) OF THE LABOUR RELATIONS ACT.



2774-72-R: NURSES' ASSOCIATION LEAMINGTON DISTRICT MEMORIAL HOSPITAL  
(APPLICANT) v. LEAMINGTON DISTRICT MEMORIAL HOSPITAL (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND O. HODGES.

APPEARANCES AT THE HEARING: D. F. O. HERSEY AND MARY HODDER APPEARING FOR THE APPLICANT; AND C. G. RIGGS APPEARING FOR THE RESPONDENT.

DECISION OF THE BOARD: JUNE 27, 1973.

1. THIS IS AN APPLICATION FOR CERTIFICATION IN WHICH THE APPLICANT IS REQUIRED TO ESTABLISH ITS STATUS AS A TRADE UNION.

2. IN THIS CONNECTION, AS WELL AS IN RESPECT TO THE APPROPRIATE BARGAINING UNIT, THE QUESTION OF THE STATUS OF PERSONS CLASSIFIED AS "HEAD NURSE" WAS RAISED BY THE RESPONDENT. THE ANSWER TO THIS QUESTION IS OF VITAL IMPORTANCE TO THE APPLICANT HAVING REFERRED TO THE PROVISIONS OF SECTION 12 OF THE LABOUR RELATIONS ACT, WHICH READS AS FOLLOWS:

12. THE BOARD SHALL NOT CERTIFY A TRADE UNION IF ANY EMPLOYER OR EMPLOYERS' ORGANIZATION HAS PARTICIPATED IN ITS FORMATION OR ADMINISTRATION OR HAS CONTRIBUTED FINANCIAL OR OTHER SUPPORT TO IT OR IF IT DISCRIMINATES AGAINST ANY PERSON BECAUSE OF HIS RACE, CREED, COLOUR, NATIONALITY, ANCESTRY OR PLACE OF ORIGIN.  
R.S.O. 1970, c. 232, s. 12

3. ON THE BASIS OF THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER HEREIN AND THE SUBMISSIONS OF THE PARTIES WITH RESPECT THERETO, THE BOARD FINDS THAT A SUBSTANTIAL NUMBER OF THE HEAD NURSES REVIEWED EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(1)(N) OF THE ACT. THE EVIDENCE CLEARLY ESTABLISHED THAT THE HEAD NURSES ACTIVELY PARTICIPATED IN THE FORMATION OF AND CONTRIBUTED THEIR SUPPORT TO THE APPLICANT INCLUDING THE ADOPTION OF ITS CONSTITUTION.

4. HAVING REGARD TO THE FOREGOING, AND TO THE MANDATORY PROVISIONS OF SECTION 12 OF THE ACT, THE BOARD IS PROHIBITED FROM CERTIFYING THE APPLICANT.

5. THE APPLICATION IS ACCORDINGLY DISMISSED.

3230-72-R: INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, A.F.L.-C.I.O.-C.L.C. (APPLICANT) v. GREEN GIANT OF CANADA LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND A. MAIN.

APPEARANCES AT THE HEARING: T. E. ARMSTRONG AND L. DAUTNER APPEARING FOR THE APPLICANT; T. D. HAMMILL AND A. K. LONG APPEARING FOR THE RESPONDENT; AND S. LERNER, Q.C. AND JOYCE O'QUINN APPEARING FOR THE OBJECTORS.

DECISION OF RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBER A. MAIN.  
JUNE 28, 1973.

1. THIS IS AN APPLICATION FOR CERTIFICATION.

. . .

7. THERE WAS A FURTHER DOCUMENT FILED WITH THE BOARD SIGNED BY TWENTY-FIVE PERSONS PURPORTING TO BE EMPLOYEES OF THE RESPONDENT. THE DOCUMENT BORE A HEADING READING AS FOLLOWS:

"ANY EMPLOYEE WHO WISHES TO HAVE  
A SECRET VOTE ON WHEATHER (SIC)  
TO HAVE A UNION OR ORGANIZATION  
REPRESENTING THEM PLEASE SIGN  
BELOW."

8. THE DOCUMENT OBVIOUSLY DOES NOT EXPRESS OPPOSITION TO THE UNION, BUT SIMPLY REQUESTS EMPLOYEES WHO WANT A SECRET VOTE TO SIGN. IT WAS URGED BY THE RESPONDENT AND THE OBJECTORS THAT THE BOARD, IN LIGHT OF THE FOREGOING, OUGHT TO ORDER A VOTE, NOTWITHSTANDING THE MEMBERSHIP STANDING OF THE APPLICANT.

9. SECTION 7(2) OF THE LABOUR RELATIONS ACT GIVES THE BOARD A DISCRETION TO ORDER A VOTE NOTWITHSTANDING THE FACT THAT MORE THAN SIXTY-FIVE PER CENT OF THE EMPLOYEES CONCERNED ARE MEMBERS OF THE UNION. THE BOARD EXERCISES ITS DISCRETION IN THIS AREA WITH CONSIDERABLE CARE AND GENERALLY ONLY WHERE THERE IS SUBSTANTIAL EVIDENCE WHICH CASTS DOUBT UPON THE MEMBERSHIP EVIDENCE FILED. UNLESS SUCH A CONDITION EXISTS, THE BOARD GIVES FULL EFFECT TO THE DESIRE OF THE REQUIRED MAJORITY OF THE EMPLOYEES AS EVIDENCED BY THE MEMBERSHIP CARDS. THERE IS NOTHING IN THE CIRCUMSTANCES RELIED UPON BY THE RESPONDENT IN THE PRESENT CASE WHICH WOULD GIVE THE BOARD REASONABLE CAUSE TO DEPART FROM ITS USUAL PRACTICE IN THIS REGARD.

10. A NUMBER OF EMPLOYEES CHARGED THAT THE APPLICANT AND THE PERSONS ENGAGED ON BEHALF OF THE APPLICANT OBTAINED SIGNATURES AND UNION MEMBERSHIP BY INTIMIDATION, COERCION AND THREATS.

11. THE EVIDENCE RELATES ONLY TO CONDUCT OF FELLOW EMPLOYEES OF THE PERSONS WHO MADE THE ALLEGATIONS TO WHICH REFERENCE IS MADE ABOVE. THERE WAS NO EVIDENCE THAT ANY OFFICIAL OF THE UNION ATTEMPTED TO INTIMIDATE, COERCE OR THREATEN ANY OF THE EMPLOYEES. THE CHARGES INsofar AS THE APPLICANT IS CONCERNED ARE THEREFORE DISMISSED.

12. THE EVIDENCE CLEARLY INDICATES THAT ONE OF THE EMPLOYEES PREFERRING CHARGES, JOYCE O'QUINN BECAME INVOLVED IN VERY LIVELY ARGUMENTS WITH JOHN LEFOLHOCK AND JEAN KOEHN, TWO EMPLOYEES WHO WERE PROMOTING THE UNION. O'QUINN'S COMPLAINT WAS THAT THE LATTER TWO WERE ATTEMPTING TO STOP HER TRYING TO DISCUSS WITH OTHER EMPLOYEES WHY THEY SHOULD NOT JOIN THE UNION. THE TWO TOLD HER TO KEEP HER - MOUTH SHUT. THE OPPOSING POSITIONS LED TO CONFRONTATIONS WHEREIN VOICES WERE RAISED AND THREATENING GESTURES MADE, BUT O'QUINN REMAINED FIRM IN HER CONVICTIONS THROUGHOUT. SHE STATED THAT WHAT SHE REALLY WANTED WAS THAT THE MATTER BE SETTLED BY VOTE. HEATED AS THESE ARGUMENTS MAY HAVE BEEN WE CANNOT FIND THAT THEY INVOLVED ANY INTIMIDATION OR COERCION WITHIN THE MEANING OF THE ACT.

13. MARY VON LAETHEM COMPLAINED THAT SHE WAS INDUCED TO JOIN THE UNION BECAUSE SHE WAS TOLD THAT THERE WOULD BE A CLOSED SHOP AND NON-UNION EMPLOYEES WOULD BE UNABLE TO WORK. SHE ALSO WAS TOLD THAT THE UNION COULD HELP HER. THIS APPARENTLY WAS AN ALLUSION TO A POSSIBILITY THAT VON LAETHEM'S JOB WAS IN JEPARDY. SHE TOO RAN AFOUL OF KOEHN, AFTER SHE HAD SIGNED HOWEVER. SHE WAS PRESENT WHEN O'QUINN AND KOEHN LOCKED HORNS IN AN ARGUMENT DURING WHICH THE LATTER SHOOK A THERMOMETER IN O'QUINN'S FACE AND TOLD BOTH OF THEM THAT THEY WERE STUPID BITCHES. THE OUTBURST, ACCORDING TO THE WITNESS WAS DUE IN PART TO HER ASSOCIATING WITH O'QUINN AND THE FACT THAT SHE HERSELF WAS ASKING QUESTIONS ABOUT THE UNION.

AS WE OBSERVED, HOWEVER, THIS DISPUTE AROSE AFTER VON LAETHEM HAS SIGNED HER CARD.

14. A THIRD COMPLAINANT, RUTH-ANN MCFEGGAN TESTIFIED THAT TWO EMPLOYEES, CHARLES BEAUSOLEIL AND EDNA DESLAURIERS, WHO WERE ORGANIZING FOR THE UNION CALLED AT HER HOUSE. SHE DID NOT ANSWER THE DOOR. SHE BELIEVED THAT THEY ENTERED THE HOUSE TO CALL HER NAME. SHE DECLINED TO GO TO MEET THEM. SUBSEQUENTLY, SHE GOT A PHONE CALL FROM CHARLES BEAUSOLEIL, A FELLOW EMPLOYEE. HE TOLD HER HE WANTED HER TO SIGN A CARD. SHE SAID SHE WAS NOT INTERESTED - THERE WAS A LOT OF ARGUMENT. SHE TESTIFIED THAT BEAUSOLEIL THEN TOLD HER THAT IF SHE DID NOT JOIN SHE WOULD EVENTUALLY LOSE HER JOB. SHE TOLD HIM TO COME BACK TO THE HOUSE WHERE SHE THEN SIGNED THE CARD.

15. BRIAN CROFT TESTIFIED THAT HE WAS TOLD BY JEAN KOEHN AND JOHN LEFOLHOCK THAT IF HE DID NOT SIGN A UNION CARD HE WOULD EITHER LOSE HIS JOB OR HAVE TO PAY A FINE LATER. HE THEN SIGNED A CARD. THIS WITNESS STATED THAT HE WAS AWARE THAT UNDER SOME UNION CONTRACTS EMPLOYEES HAVE TO BELONG TO THE UNION. HE SAID, HOWEVER, THAT HE TOOK THE ORGANIZER'S STATEMENT AT ITS FACE VALUE AND DID NOT MAKE ANY INQUIRIES UNTIL LATER ON WHEN HE FOUND THAT THE STATEMENTS WERE NOT ENTIRELY VALID.

16. IN THE TESTIMONY OF THE WITNESSES THERE WAS EVIDENCE OF CONFRONTATIONS AND HEATED ARGUMENTS WHICH TOOK PLACE AFTER THE SIGNING OF THE CARDS. THESE AROSE QUITE NATURALLY BETWEEN THE EMPLOYEES WHO WERE IN FAVOUR AND THOSE WHO WERE OPPOSED TO THE UNION AND IN THE OPINION OF THE BOARD CANNOT BE GIVEN SIGNIFICANCE IN RELATION TO THE CHARGES.



17. AS WE HAVE ALREADY OBSERVED, THERE IS NOTHING IN THE EVIDENCE IN ANYWAY IMPLICATING THE APPLICANT IN THE RECRUITING TACTICS ADOPTED BY THESE EMPLOYEES WHO UNDERTOOK TO SIGN UP UNION MEMBERS. THE STATEMENTS OF THE EFFECTS OF NON-MEMBERSHIP MADE BY THE ORGANIZERS WERE ON THE EVIDENCE, OF THEIR OWN DEVISING. THEY WERE MADE BY EMPLOYEES TO FELLOW EMPLOYEES, DESCRIBED IN SEVERAL INSTANCES AS "FRIENDS" OF THESE COMPLAINANTS. THE STATEMENTS MAY WELL HAVE BEEN MISLEADING ALTHOUGH THEY WERE SOMEWHAT QUALIFIED IN THE CASE OF MCFEGGAN AND CROFT, BUT THEY COULD HAVE BEEN AS READILY CHECKED BEFORE THE SIGNING AS THE EVIDENCE SHOWS THEY WERE AFTERWARDS.

18. THE BOARD FINDS THAT THE ACTIONS OF THE EMPLOYEE ORGANIZER'S WERE NOT SUCH AS WOULD UNDULY INFLUENCE A REASONABLE EMPLOYEE AND DO NOT CONSTITUTE INTIMIDATION, COERCION OR THREATS WITHIN THE MEANING OF THE ACT. THE CHARGES ARE ACCORDINGLY DISMISSED.

19. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN SIXTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT AT THE TIME THE APPLICATION WAS MADE WERE MEMBERS OF THE APPLICANT ON FEBRUARY 19TH, 1973, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2) (J) OF THE LABOUR RELATIONS ACT TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

20. A CERTIFICATION WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER J. D. BELL: JUNE 28, 1973.

I CONCUR WITH THIS DECISION EXCEPT THAT, HAVING REVIEWED THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER, I FIND THAT HAROLD HOLMAN'S DUTIES AND HIS COMMUNITY OF INTEREST IDENTIFY HIM WITH THE OFFICE STAFF AND AS SUCH SHOULD BE EXCLUDED FROM THE BARGAINING UNIT AGREED TO BY THE PARTIES.









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APPLICATION UNDER SECTION 39 DISPOSED OF DURING MAY

3586-73-M: GERALD GROENENBERG (APPLICANT) V. INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW), LOCAL 127 (RESPONDENT TRADE UNION) V. EATON SPRINGS CANADA LIMITED (RESPONDENT EMPLOYER). (GRANTED).

APPLICATION FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT

3620-73-M: GAGE STATIONERY COMPANY, DIVISION OF DRG LIMITED (EMPLOYER) V. UNITED PAPERWORKERS INTERNATIONAL UNION AND ITS HALTON LOCAL NUMBER 173 (TRADE UNION). (GRANTED).

REFERENCE TO BOARD PURSUANT TO SECTION 96

3578-73-M: DOWNSVIEW LATHING COMPANY LTD. (EMPLOYER) V. INTERNATIONAL BROTHERHOOD OF PAINTERS & ALLIED TRADES - LOCAL UNION 1891 (TRADE UNION). (DISMISSED).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

3340-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. PUBLIC UTILITIES COMMISSION OF COBOURG (RESPONDENT). (REQUEST DENIED).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - SECTION 79

2930-72-U: MOHAMED SALAH GUINDEHI (COMPLAINANT) V. UNITED STEELWORKERS OF AMERICA LOCAL UNION NO. 7608 (RESPONDENT). (REQUEST DENIED).

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING JUNE 1973

BARGAINING AGENTS CERTIFIED DURING JUNENO VOTE CONDUCTED

18769-70-R: CSAO NATIONAL (INC.) (APPLICANT) V. OSHAWA GENERAL HOSPITAL (RESPONDENT) V. THE CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101 (INTERVENER).

UNIT: "ALL TECHNOLOGISTS AND LABORATORY ASSISTANTS IN THE EMPLOY OF THE RESPONDENT IN ITS MEDICAL LABORATORY AT OSHAWA, SAVE AND EXCEPT CHIEF

TECHNOLOGISTS AND PERSONS ABOVE THE RANK OF CHIEF TECHNOLOGIST, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS TECHNOLOGISTS, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND PERSONS COVERED BY SUBSISTING COLLECTIVE AGREEMENTS BETWEEN THE RESPONDENT AND THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 45, THE CANADIAN UNION OF OPERATING ENGINEERS, LOCAL 101 AND THE NURSES' ASSOCIATION OSHAWA GENERAL HOSPITAL." (48 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR PURPOSES OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT PHLEBOTOMY TECHNICIANS ARE INCLUDED IN THE CLASSIFICATION OF LABORATORY ASSISTANT.).

3053-72-R: AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. F. G. BRADLEY CO. LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK." (138 EMPLOYEES IN THE UNIT).

[1973] 2 OLRB M.R. - PAGE 342.

3097-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 527 (APPLICANT) V. PEERLESS ENTERPRISES A DIV. OF TECTUM LTD. (RESPONDENT) V. THE BUILT-UP ROOFERS' DAMP WATERPROOFERS' SECTION OF THE SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL UNION NO. 30 (INTERVENER #1) V. SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION LOCAL #47 (INTERVENER #2).

UNIT: "ALL ROOFING PERSONNEL IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA - CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (10 EMPLOYEES IN THE UNIT).

3230-72-R: INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, A.F.L.-C.I.O.-C.L.C. (APPLICANT) V. GREEN GIANT OF CANADA LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT FOREMAN, CHIEF ENGINEER, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, CANTEEN STAFF, NURSES AND FIRST AID ATTENDANTS, FIELDMAN, SEASONAL EMPLOYEES AND STUDENTS EMPLOYED FOR THE SCHOOL VACATION PERIOD." (163 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

[1973] 2 OLRB M.R. - PAGE 376.

3277-72-R: CANADIAN FOOD AND ALLIED WORKERS, LOCAL UNION 175 CHARTERED BY THE AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA (APPLICANT) V. DARRIGO'S FOOD MARKETS ONT. LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES IN METROPOLITAN TORONTO REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (156 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

[1973] 2 OLRB M.R. - PAGE 372.

3362-72-R: TEAMSTERS LOCAL UNION 879 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. E & E SEEGMILLER LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL TRUCK DRIVERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF WATERLOO EXCEPT PART OF BEVERLY TOWNSHIP ANNEXED BY NORTH DUMFRIES TOWNSHIP, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN." (22 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES). (FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT DISPATCHERS ARE NOT INCLUDED IN THE BARGAINING UNIT.).

[1973] 2 OLRB M.R. - PAGE 320.

3465-72-R: WELLAND TYPOGRAPHICAL UNION No. 927 (APPLICANT) V. THE EVENING TRIBUNE (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT REGULARLY ENGAGED IN PROOF-READING FUNCTIONS FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK." (5 EMPLOYEES IN THE UNIT).

[1973] 2 OLRB M.R. - PAGE 371.

3500-72-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA LOCAL UNION #494 (APPLICANT) V. WHITNEY MAINTENANCE LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF ESSEX AND KENT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE FOREGOING).

3559-73-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. AL. SMITH PLASTERING & PARTITION COMPANY LIMITED (RESPONDENT).

UNIT: "ALL PLASTERERS, PLASTERERS' APPRENTICES, LATHERS, LATHERS' APPRENTICES, CARPENTERS, CARPENTERS' APPRENTICES AND CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF SIMCOE, THE DISTRICT MUNICIPALITY OF MUSKOKA AND THE TOWNSHIP OF THORAH AND ALL LAND NORTH THEREOF IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

3574-73-R: THE LONDON AMBULANCE ATTENDANTS ASSOCIATION (APPLICANT) V. THAMES VALLEY AMBULANCE LIMITED (RESPONDENT).



UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (49 EMPLOYEES IN THE UNIT). (THE BOARD NOTED THAT THE RESPONDENT BY LETTER DATED JUNE 4, 1973 HAS WITHDRAWN ITS OBJECTIONS TO THE INCLUSION IN THE BARGAINING UNIT OF PERSONS CLASSIFIED AS DISPATCHERS. FOR PURPOSES OF CLARITY THE BOARD ACCORDINGLY DECLARES THAT DISPATCHERS ARE EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.).

3649-73-R: CHATHAM CONSTRUCTION WORKERS ASSOCIATION, LOCAL #53, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. NOR - CON ELECTRIC COMPANY (RESPONDENT) V. INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL #773 (INTERVENER).

UNIT: "ALL ELECTRICIANS AND ELECTRICIANS' APPRENTICES, IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF ESSEX AND KENT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

3705-73-R: OPERATIVE PLASTERER'S AND CEMENT MASON'S INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA LOCAL UNION #124, OTTAWA, ONTARIO (APPLICANT) V. D'ANGELO PLASTERING CO. LTD. (RESPONDENT).

UNIT: "ALL PLASTERERS AND PLASTERERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA - CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (15 EMPLOYEES IN THE UNIT). (FOR THE PURPOSE OF CLARITY THE BOARD DECLARED THAT DRYWALL TAPERS ARE INCLUDED IN THE BARGAINING UNIT.).

3716-73-R: BRICKLAYERS, MASONS INDEPENDENT UNION OF CANADA LOCAL 1 (APPLICANT) V. METRUS CONTRACTING LIMITED (RESPONDENT) V. BRICKLAYERS, MASONS & TILESETTERS UNION LOCAL #2 ONT. (INTERVENER).

UNIT: "ALL BRICKLAYERS, BRICKLAYERS' APPRENTICES AND CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUERLING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (43 EMPLOYEES IN THE UNIT).

3721-73-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (APPLICANT) V. TOLEDO SCALE DIVISION OF RELIANCE ELECTRIC LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BRANTFORD." (2 EMPLOYEES IN THE UNIT).

3726-73-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. NORTH SIMCOE ELECTRICAL CONTRACTING LIMITED (RESPONDENT).

UNIT: "ALL ELECTRICIANS AND ELECTRICIANS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF LENNOX AND ADDINGTON, AND THE COUNTY OF FRONTENAC AND THE TOWNSHIPS OF REAR OF LEEDS AND LANSDOWNE, REAR OF YONGE AND ESCOTT, AND ALL LANDS SOUTH THEREOF IN THE UNITED COUNTIES OF LEEDS AND GRENVILLE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

3747-73-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. G. TAMBLYN LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AT OSHAWA, SAVE AND EXCEPT MERCHANDISE MANAGER, PERSONS ABOVE THE RANK OF MERCHANDISE MANAGER, AND OFFICE STAFF." (9 EMPLOYEES IN THE UNIT).

3748-73-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. WHEATLEY MANUFACTURING DIVISION ELCO-WOOD INDUSTRIES LIMITED (RESPONDENT).

UNIT: "ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT DEPARTMENT HEADS AND PERSONS ABOVE THE RANK OF DEPARTMENT HEAD." (6 EMPLOYEES IN THE UNIT).

3762-73-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. G. TAMBLYN LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OSHAWA, SAVE AND EXCEPT MERCHANDISE MANAGER, FOOD SERVICE MANAGERESS, GRADUATE AND UNDERGRADUATE PHARMACISTS, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (14 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

3767-73-R: UNITED SHOE WORKERS OF AMERICA (APPLICANT) V. GREB INDUSTRIES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS CEMA (V) PLANT AT 51 ARDELT AVENUE, KITCHENER, SAVE AND EXCEPT LEAD HANDS AND PERSONS ABOVE THE RANK OF LEAD HAND, SHOE DESIGNERS, OFFICE, CLERICAL AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (185 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

3778-73-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. STAUFFER CHEMICAL COMPANY OF CANADA, LTD. (RESPONDENT).

UNIT: "ALL TECHNICIANS OF THE RESPONDENT IN ITS CANADIAN VINYL FABRICS DIVISION IN METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, PERSONS

ABOVE THE RANK OF SUPERVISOR, AND EMPLOYEES COVERED BY SUBSISTING COLLECTIVE AGREEMENTS." (12 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

3789-73-R: OFFICE & PROFESSIONAL EMPLOYEES INTERNATIONAL UNION (APPLICANT) V. PAUL LAWRENCE MULLINS (RESPONDENT).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT BELLE RIVER, SAVE AND EXCEPT PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (3 EMPLOYEES IN THE UNIT).

3795-73-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. G. TAMBLYN LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WHITBY REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, SAVE AND EXCEPT MERCHANDISE MANAGER, PERSONS ABOVE THE RANK OF MERCHANDISE MANAGER, GRADUATE AND UNDERGRADUATE PHARMACISTS AND OFFICE STAFF." (2 EMPLOYEES IN THE UNIT).

3796-73-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. G. TAMBLYN LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WHITBY, SAVE AND EXCEPT MERCHANDISE MANAGERS, PERSONS ABOVE THE RANK OF MERCHANDISE MANAGER, GRADUATE AND UNDERGRADUATE PHARMACISTS, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (5 EMPLOYEES IN THE UNIT).

3802-73-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. GAMBLE ROBINSON LIMITED (RESPONDENT).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT SUDBURY, SAVE AND EXCEPT OFFICE MANAGERS, PERSONS ABOVE THE RANK OF OFFICE MANAGER, SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (4 EMPLOYEES IN THE UNIT).

3804-73-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. CORPORATION OF THE TOWN OF AJAX (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS DAY CARE CENTRE, SAVE AND EXCEPT SUPERVISOR, PERSONS ABOVE THE RANK OF SUPERVISOR AND OFFICE STAFF." (6 EMPLOYEES IN THE UNIT).

3809-73-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 880 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. BOULEVARD RESTAURANT LIMITED (RESPONDENT).

UNIT: "ALL DRIVER SALESMEN OF THE RESPONDENT AT SARNIA, SAVE AND EXCEPT



SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR AND OFFICE STAFF." (12 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE SUBMISSIONS OF THE PARTIES).

3810-73-R: CANADIAN BROTHERHOOD OF RAILWAY TRANSPORT AND GENERAL WORKERS (APPLICANT) V. CENTEAST AUTO TERMINALS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN." (8 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

3818-73-R: CANADIAN FOOD AND ALLIED WORKERS LOCAL UNION 725, CHARTERED BY THE AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA (APPLICANT) V. CARDINAL DISTRIBUTORS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES AT CAMBRIDGE, SAVE AND EXCEPT MANAGER, PERSONS ABOVE THE RANK OF MANAGER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (14 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

3820-73-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. AJAX TGA MARKET (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT AJAX REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (9 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

3829-73-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1669 (APPLICANT) V. TURZILLO CONTRACTING LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF KENORA, INCLUDING THE PATRICIA PORTION, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT). (FOR THE PURPOSES OF CLARITY THE BOARD DECLARED THAT THE DIVER AND THE DIVER'S TENDER ARE INCLUDED IN THE BARGAINING UNIT.).

3832-73-R: LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, S.E.I.U., A.F.L.-C.I.O.-C.L.C. (APPLICANT) V. SUN HAVEN NURSING HOME (1972) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF DELAWARE, SAVE AND EXCEPT FOREMEN AND SUPERVISORS, PERSONS ABOVE THE RANK OF FOREMAN AND SUPERVISOR, PROFESSIONAL NURSING STAFF, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (93 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

3839-73-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. HOULE RED & WHITE FOODMASTER (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT MASSEY, ONTARIO, SAVE AND EXCEPT STORE MANAGER, PERSONS ABOVE THE RANK OF STORE MANAGER AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (6 EMPLOYEES IN THE UNIT).

3841-73-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE TOWN OF SIMCOE (RESPONDENT).

UNIT: "ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT IN THE TOWN OF SIMCOE, SAVE AND EXCEPT DEPARTMENT HEADS, THOSE ABOVE THE RANK OF DEPARTMENT HEAD, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (9 EMPLOYEES IN THE UNIT).

3844-73-R: LONDON & DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, S.E.I.U., A.F. of L., C.I.O., C.L.C. (APPLICANT) V. SUNBEAM HOMES FOR RETARDED CHILDREN (WATERLOO) INCORPORATED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT KITCHENER, SAVE AND EXCEPT FOREMEN, SUPERVISORS, PERSONS ABOVE THE RANKS OF FOREMAN AND SUPERVISOR, PROFESSIONAL NURSING STAFF, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (87 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

3845-73-R: THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION 721 (APPLICANT) V. CANADIAN REFACTORIES LTD. DIVISION OF DRESSER INDUSTRIES (RESPONDENT).

UNIT: "ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF ONTARIO (EXCEPT THE TOWNSHIPS OF PICKERING, RAMA, MARA AND THORAH) AND THE COUNTY OF DURHAM (EXCEPT THE TOWNSHIP OF HOPE), SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

3846-73-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (APPLICANT) V. NABISCO FOODS, DIVISION OF NABISCO LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF CHINGUACOUSY, SAVE AND EXCEPT ASSISTANT FOREMEN, ASSISTANT FOREWOMEN, PERSONS ABOVE THE RANKS OF ASSISTANT FOREMAN AND ASSISTANT FOREWOMAN, AND OFFICE AND SALES STAFF." (22 EMPLOYEES IN THE UNIT).

3848-73-R: OIL & GAS TECHNICIANS, SERVICE, DOMESTIC & GENERAL WORKERS UNION, LOCAL 1267 (APPLICANT) V. COMMERCIAL EXHAUST HOOD & VENT INSTALLATIONS (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE

AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (3 EMPLOYEES IN THE UNIT).

3851-73-R: THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION 721 (APPLICANT) V. COTE STEEL ERECTORS (RESPONDENT).

UNIT: "ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

3855-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 527 (APPLICANT) V. COSTAIN ESTATES LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA - CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (18 EMPLOYEES IN THE UNIT).

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3859-73-R: THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA - LOCAL UNION 628 (APPLICANT) V. R. "BENNY" BENOIT PLUMBING AND HEATING (RESPONDENT).

UNIT: "ALL PLUMBERS AND PLUMBERS' APPRENTICES, STEAMFITTERS AND STEAMFITTERS' APPRENTICES, PIPEFITTERS AND PIPEFITTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF KENORA, INCLUDING THE PATRICIA PORTION, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

3864-73-R: OFFICE & PROFESSIONAL EMPLOYEES INTERNATIONAL UNION (APPLICANT) V. MACMILLAN & MACMILLAN (RESPONDENT).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT WINDSOR." (3 EMPLOYEES IN THE UNIT).

3866-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (APPLICANT) V. COOPER CONSTRUCTION COMPANY (EASTERN) LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF SIMCOE, THE DISTRICT MUNICIPALITY OF MUSKOKA AND THE TOWNSHIP OF THORAH AND ALL LAND NORTH THEREOF IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).



3873-73-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS UNION, LOCAL No. 880 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. ESSEX FARMERS LIMITED (RESPONDENT).

UNIT: "ALL OFFICE EMPLOYEES OF THE RESPONDENT AT ESSEX, SAVE AND EXCEPT DEPARTMENT MANAGERS, PERSONS ABOVE THE RANK OF DEPARTMENT MANAGER, SECRETARY TO THE GENERAL MANAGER, SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (12 EMPLOYEES IN THE UNIT).

3882-73-R: THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION 586 (APPLICANT) V. J. S. H. MUELLER LTD. (RESPONDENT).

UNIT: "ALL ELECTRICIANS AND ELECTRICIANS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF RENFREW, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

3886-73-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL 249 (APPLICANT) V. COMBUSTION ENGINEERING-SUPERHEATER LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF LENNOX AND ADDINGTON, AND THE COUNTY OF FRONTENAC AND THE TOWNSHIPS OF REAR OF LEEDS AND LANSDOWNE, REAR OF YONGE AND ESCOTT, AND ALL LANDS SOUTH THEREOF IN THE UNITED COUNTIES OF LEEDS AND GRENVILLE SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

3887-73-R: THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL UNION 721 (APPLICANT) V. ZURMAC INSTALLATION (RESPONDENT).

UNIT: "ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

3888-73-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. G. TAMBLYN LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT STRATFORD, SAVE AND EXCEPT MERCHANDISE MANAGER AND PERSONS ABOVE THE RANK OF MERCHANDISE MANAGER, GRADUATE AND UNDERGRADUATE PHARMACISTS." (3 EMPLOYEES IN THE UNIT).

3889-73-R: READY-MIX, BUILDING SUPPLY, HYDRO & CONSTRUCTION DRIVERS, WAREHOUSEMEN & HELPERS, LOCAL 230 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. GIORDANO SAND & GRAVEL LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT CLAREMONT, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (8 EMPLOYEES IN THE UNIT).

3890-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA (APPLICANT) V. LIQUID CARBONIC CANADA LTD./LTEE. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT 1500 POWER DAM DRIVE IN CORNWALL, SAVE AND EXCEPT MANAGER AND PERSONS ABOVE THE RANK OF MANAGER, OFFICE STAFF, SALESMEN, SERVICEMEN, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (4 EMPLOYEES IN THE UNIT). (FOR THE PURPOSES OF CLARITY THE BOARD DECLARED THAT EMPLOYEES CLASSIFIED BY THE RESPONDENT AS DRIVER-SALESMEN ARE INCLUDED IN THE BARGAINING UNIT.).

3891-73-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL 647 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. MCCORMICK'S LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OTTAWA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (9 EMPLOYEES IN THE UNIT).

3892-73-R: GENERAL TRUCK DRIVERS' UNION LOCAL 938 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. BEAVER LUMBER COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SAULT STE. MARIE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, MANAGER TRAINEES, OFFICE AND SALES STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK." (4 EMPLOYEES IN THE UNIT).

3895-73-R: AMALGAMATED SILVER, JEWELRY AND ALLIED WORKERS UNION LOCAL 44 INTERNATIONAL JEWELRY WORKERS UNION (APPLICANT) V. BAR-WELL FOODS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT TRENTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE AND SALES STAFF." (27 EMPLOYEES IN THE UNIT).

3899-73-R: INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA (APPLICANT) V. HENNINGER BREWERY (ONTARIO) LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, LABORATORY STAFF AND CLERICAL EMPLOYEES." (7 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

3905-73-R: AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, A.F.L., C.I.O., C.L.C. (APPLICANT) V. GRIMM'S FOODS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF VAUGHAN, SAVE AND EXCEPT FOREMEN AND SUPERVISOR, PERSONS ABOVE THE RANK OF FOREMAN AND SUPERVISOR, OFFICE AND SALES STAFF, PERSONS EMPLOYED REGULARLY FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (28 EMPLOYEES IN THE UNIT).

3914-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 527 (APPLICANT) V. SHAMERAM FORMING CO. LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA - CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

3916-73-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. G. TEMPELMAN TRUCKING (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE DISTRICT OF THUNDER BAY ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

3919-73-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. WHITNEY MAINTENANCE LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF NIAGARA AND THE COUNTY OF HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES).

3920-73-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL UNION 493 (APPLICANT) V. WINSON CONSTRUCTION LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIPS OF DANA, MCWILLIAMS, CRERAR, GIBBONS, HUGEL AND BADGEROW IN THE DISTRICT OF NIPISSING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

3921-73-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 749 (APPLICANT) V. BEGG & DAIGLE (1972) LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF ESSEX AND KENT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).



3924-73-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. CROWN ELECTRIC COMPANY (RESPONDENT).

UNIT: "ALL ELECTRICIANS AND ELECTRICIANS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF PETERBOROUGH, VICTORIA AND THE PROVISIONAL COUNTY OF HALIBURTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

3933-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) V. IMPACT CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA - CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (16 EMPLOYEES IN THE UNIT).

3938-73-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 493 (APPLICANT) V. S. FURTNER MASONRY CONSTRUCTION CO., LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WITHIN A FIFTY MILE RADIUS OF THE TIMMINS FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

3939-73-R: THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 804 (APPLICANT) V. JOHNSON-MEADE COMPANY LIMITED (RESPONDENT).

UNIT: "ALL ELECTRICIANS AND ELECTRICIANS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WELLINGTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

3946-73-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. MARTIN-STEWART CONTRACTING LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

3956-73-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA (APPLICANT) V. DUNKER CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF SIMCOE, THE DISTRICT MUNICIPALITY OF MUSKOKA AND THE TOWNSHIP OF THORAH AND ALL LAND NORTH THEREOF IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (19 EMPLOYEES IN THE UNIT).

3957-73-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION 586 (APPLICANT) V. DOUG EDGAR ELECTRIC (RESPONDENT).

UNIT: "ALL ELECTRICIANS AND ELECTRICIANS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF LANARK, AND THE TOWNSHIPS OF SOUTH CROSBY, BASTARD, KITLEY, WOLFORD, OXFORD (ON RIDEAU) AND SOUTH GOWER AND ALL LANDS NORTH THEREOF IN THE UNITED COUNTIES OF LEEDS AND GRENVILLE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

3958-73-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION 586 (APPLICANT) V. STAN'S ELECTRICAL SERVICE (RESPONDENT).

UNIT: "ALL ELECTRICIANS AND ELECTRICIANS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA - CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

3963-73-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL 2466 (APPLICANT) V. GEORGE C. WHITMORE BUILDING CONTRACTOR (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF RENFREW, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

3982-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 837 (APPLICANT) V. ROAD WIN CONTRACTING LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF NIAGARA AND THE COUNTY OF HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

3986-73-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 2466 (APPLICANT) V. C. D. MACDONALD, BUILDING CONTRACTOR (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF RENFREW, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

#### APPLICATIONS CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

3641-73-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. TWEED VENEERS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT TWEED, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (58 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		41
NUMBER OF PERSONS WHO CAST BALLOTS	29	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	27	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	2	

3647-73-R: TEAMSTERS LOCAL UNION 879 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. HOFFMAN BROTHERS LIMITED, A DIVISION OF UNITED WESTBURNE INDUSTRIES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (48 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		43
NUMBER OF PERSONS WHO CAST BALLOTS	43	
NUMBER OF SPOILED BALLOTS	1	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	26	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	16	

3688-73-R: SERVICE EMPLOYEES UNION, LOCAL 210, AFL-CIO-CLC, WINDSOR, ONTARIO (APPLICANT) V. BLUE WATER REST HOME (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ZURICH, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, REGISTERED NURSES, SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (18 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		16
NUMBER OF PERSONS WHO CAST BALLOTS	16	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	11	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	5	



3728-73-R: BOOT & SHOE WORKERS' UNION, AFFILIATED WITH THE CANADIAN LABOUR CONGRESS, AFL-CIO (APPLICANT) V. ONTARIO HOMES FOR MENTALLY RETARDED INFANTS INC. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT THURLOW TOWNSHIP, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, REGISTERED NURSES, OFFICE STAFF, CHIEF MAINTENANCE MAN, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (53 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		52
NUMBER OF PERSONS WHO CAST BALLOTS	50	
NUMBER OF SPOILED BALLOTS	2	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	35	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	13	

3729-73-R: THE CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. DOUGLAS MEMORIAL HOSPITAL (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 772 (INTERVENER).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED BY THE RESPONDENT IN THE BOILER ROOM OF ITS HOSPITAL AT FORT ERIE, SAVE AND EXCEPT THE CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF CHIEF ENGINEER." (5 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		4
NUMBER OF PERSONS WHO CAST BALLOTS	4	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	3	
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	1	

3744-73-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) V. CORDS CANADA, LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (92 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		93
NUMBER OF PERSONS WHO CAST BALLOTS		90
BALLOTS SEGREGATED AND NOT COUNTED	1	
NUMBER OF SPOILED BALLOTS	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	58	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	30	

3803-73-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. METROPOLITAN TORONTO LIBRARY BOARD (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT SECTION HEADS, DEPARTMENT HEADS AND PERSONS ABOVE THE RANKS OF SECTION HEAD AND DEPARTMENT HEAD, PROFESSIONAL LIBRARIANS, SECRETARIES TO THE DIRECTOR, ASSOCIATE DIRECTOR, HEAD OF CENTRAL LIBRARY AND THE PERSONNEL OFFICER, PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND CANADIAN UNION OF PUBLIC EMPLOYEES AND ITS LOCAL 1003, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (192 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR THE PURPOSES OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE BUSINESS OFFICE SUPERVISOR EXERCISES MANAGERIAL FUNCTIONS AND IS EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND IS NOT INCLUDED IN THE BARGAINING UNIT.).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		183
NUMBER OF PERSONS WHO CAST BALLOTS		169
BALLOTS SEGREGATED AND NOT COUNTED	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	110	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	58	

3819-73-R: UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA AFL CIO CLC (APPLICANT) V. JELINEK SPORTS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS CANADIAN SKATE INDUSTRIES DIVISION AT 450 SOUTH SERVICE ROAD, OAKVILLE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (78 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		78
NUMBER OF PERSONS WHO CAST BALLOTS	76	
NUMBER OF SPOILED BALLOTS	3	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	38	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	35	

APPLICATIONS CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

2857-72-R: INTERNATIONAL UNION OF ELECTRICAL, RADIO & MACHINE WORKERS,  
AFL-CIO-CLC (APPLICANT) V. SIMPLICITY PRODUCTS DIVISION OF MCGRAW-EDISON  
CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT CAMBRIDGE SAVE AND EXCEPT  
FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF,  
SALARIED FIELD SERVICE REPRESENTATIVES, PERSONS REGULARLY EMPLOYED FOR  
NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING  
THE SCHOOL VACATION PERIOD." (354 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		409
NUMBER OF PERSONS WHO CAST BALLOTS	385	
NUMBER OF SPOILED BALLOTS	4	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	220	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	161	

3245-72-R: CANADIAN URETHANE SOLES EMPLOYEES' ASSOCIATION (APPLICANT)  
V. CANADIAN URETHANE SOLES LIMITED (RESPONDENT) V. UNITED RUBBER, CORK,  
LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL CIO CLC (INTERVENER) V.  
GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT  
FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY,  
OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN  
24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION  
PERIOD." (137 EMPLOYEES IN THE UNIT).

NUMBER OF PERSONS ON REVISED VOTERS' LIST		106
NUMBER OF PERSONS WHO CAST BALLOTS	89	
NUMBER OF SPOILED BALLOTS	2	
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	45	
NUMBER OF BALLOTS MARKED AGAINST INTERVENER	39	



3614-73-R: SERVICE EMPLOYEES UNION LOCAL 268, AFFILIATED WITH THE SERVICE EMPLOYEES INTERNATIONAL UNION, A.F. OF L., C.I.O. & C.L.C. (APPLICANT) V. PLUMMER MEMORIAL PUBLIC HOSPITAL (RESPONDENT).

UNIT: "ALL REGISTERED RADIOLOGY TECHNICIANS, REGISTERED LABORATORY TECHNOLOGISTS, LABORATORY TECHNICIANS, LABORATORY ASSISTANTS, DARK ROOM ASSISTANTS, CARDIOLOGY ASSISTANTS, PHARMACY AIDE, OCCUPATIONAL THERAPY AIDE, PHYSIOTHERAPY PORTER EMPLOYED BY THE RESPONDENT AT SAULT STE. MARIE, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, CHIEF LABORATORY TECHNOLOGISTS, CHIEF ELECTRO CARDIOLOGY TECHNICIANS, CHIEF TECHNICIAN - NUCLEAR MEDICINE, CHIEF RADIOLOGY TECHNICIAN, CHARGE LABORATORY TECHNOLOGISTS, CHIEF INSTRUCTORS OF LABORATORY AND RADIOLOGY, GRADUATE PHYSIOTHERAPISTS, GRADUATE OCCUPATIONAL THERAPISTS, GRADUATE INHALATION THERAPISTS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND PERSONS COVERED BY SUBSISTING COLLECTIVE AGREEMENTS." (31 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	30
NUMBER OF PERSONS WHO CAST BALLOTS	30
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	19
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	11

3654-73-R: OPERATIVE PLASTERERS' AND CEMENT MASON'S INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA LOCAL UNION No. 124 OTTAWA (APPLICANT) V. SHOKBETON LTD. (RESPONDENT).

UNIT: "ALL CEMENT MASONS AND CEMENT MASONS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS'	
LIST	8
NUMBER OF PERSONS WHO CAST BALLOTS	8
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	8
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	0

3693-73-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. SWINGLINE OF CANADA LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES

STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK." (97 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		95
NUMBER OF PERSONS WHO CAST BALLOTS	85	
NUMBER OF SPOILED BALLOTS	2	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	65	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	18	

#### APPLICATIONS FOR CERTIFICATION DISMISSED DURING JUNE

##### NO VOTE CONDUCTED

2774-72-R: NURSES' ASSOCIATION LEAMINGTON DISTRICT MEMORIAL HOSPITAL (APPLICANT) V. LEAMINGTON DISTRICT MEMORIAL HOSPITAL (RESPONDENT). (107 EMPLOYEES).

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3532-72-R: GENERAL TRUCK DRIVERS' UNION LOCAL 938 INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS (APPLICANT) V. H'WK FORWARDING LIMITED (RESPONDENT). (12 EMPLOYEES).

3629-73-R: BRICKLAYERS, MASONS & PLASTERERS INTERNATIONAL UNION OF AMERICA, LOCAL 13 (APPLICANT) V. BRUNET BROS. LIMITED - GENERAL CONTRACTORS (RESPONDENT). (12 EMPLOYEES).

3646-73-R: STANLEY DIXON, DOUG MAWSON, AND LES STEEPER (APPLICANTS) V. CANADIAN UNION OF PUBLIC EMPLOYEES (RESPONDENT) V. TOWNSHIP OF MCGILLIVRAY (INTERVENER). (3 EMPLOYEES).

3691-73-R: LOCAL 280 OF THE INTERNATIONAL BEVERAGE DISPENSERS AND BARTENDERS' UNION A.F.L.-C.I.O.-C.L.C. (APPLICANT) V. PRINCE CARLTON HOTEL LTD., CARRYING ON BUSINESS AS LARRY'S HIDEAWAY (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (13 EMPLOYEES).

3701-73-R: OFFICE & PROFESSIONAL EMPLOYEES INTERNATIONAL UNION (APPLICANT) V. HOCHBERG & SLOPEN (RESPONDENT). (NO EMPLOYEES).

3765-73-R: CANADIAN BROTHERHOOD OF RAILWAY TRANSPORT AND GENERAL WORKERS (APPLICANT) V. R. E. LAW CONSTRUCTION LIMITED (PAVCO) (RESPONDENT). (65 EMPLOYEES).

3770-73-R: TEAMSTERS LOCAL 990 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT)

ALF COOPER & CO. LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).  
(NO EMPLOYEES).

3771-73-R: TEAMSTERS LOCAL 990 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. ALF COOPER & CO. LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (NO EMPLOYEES).

3772-73-R: TEAMSTERS LOCAL 990 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. ALF COOPER & CO. LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (NO EMPLOYEES).

3773-73-R: TEAMSTERS LOCAL 990 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. ALF COOPER & CO. LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (NO EMPLOYEES).

3774-73-R: TEAMSTERS LOCAL 990 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. ALF COOPER & CO. LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (NO EMPLOYEES).

3788-73-R: OFFICE & PROFESSIONAL EMPLOYEES INTERNATIONAL UNION (APPLICANT) V. MICHAEL F. STOYKA (RESPONDENT). (2 EMPLOYEES).

3805-73-R: TEAMSTERS LOCAL 990 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. ALF COOPER & CO. LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (NO EMPLOYEES).

3806-73-R: TEAMSTERS LOCAL 990 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. ALF COOPER & CO. LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (NO EMPLOYEES).

3817-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1059 (APPLICANT) V. W. A. McDougall CONSTRUCTION MANAGEMENT LTD. (RESPONDENT) V. INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS - LOCAL UNION No. 700 (INTERVENER). (2 EMPLOYEES).

3838-73-R: THE INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (APPLICANT) V. SAMSONITE OF CANADA LIMITED (RESPONDENT). (170 EMPLOYEES).

3854-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 493 (APPLICANT) V. H. SPEAKER GENERAL CONTRACTOR (RESPONDENT). (3 EMPLOYEES).

3860-73-R: SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION LOCAL UNION 537 (APPLICANT) V. J. H. ABRAHAM ROOFING (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (10 EMPLOYEES).



3868-73-R: SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL UNION #285 (APPLICANT) V. WESTON SHEET METAL COMPANY (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (14 EMPLOYEES).

3904-73-R: CANADIAN UNION OF INDUSTRIAL EMPLOYEES (APPLICANT) V. THE GOLD CREST PRODUCTS LIMITED (RESPONDENT) V. INTERNATIONAL WOODWORKERS OF AMERICA (INTERVENER). (389 EMPLOYEES).

3907-73-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION #38 (APPLICANT) V. SHERCEC DEVELOPMENTS LIMITED (RESPONDENT). (12 EMPLOYEES).

CERTIFICATION DISMISSED SUBSEQUENT TO PRE-HEARING VOTE

3172-72-R: INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, A.F.L., C.I.O., -C.L.C. (APPLICANT) V. THAMES VALLEY BEVERAGES (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT OR WORKING OUT OF LONDON, SAVE AND EXCEPT FOREMEN, SALES SUPERVISORS, PERSONS ABOVE THE RANKS OF FOREMAN AND SALES SUPERVISOR, SALES STAFF, OFFICE STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (36 EMPLOYEES). (... THE BOARD DIRECTED THAT THE BALLOT BOX CONTAINING ALL THE BALLOTS CAST IN THE PRE-HEARING REPRESENTATION VOTE SHALL BE SEALED AND THAT THE BALLOTS SHALL NOT BE COUNTED PENDING THE FURTHER DIRECTION OF THE BOARD).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		32
NUMBER OF PERSONS WHO CAST BALLOTS	28	
BALLOTS SEGREGATED AND NOT COUNTED	4	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	12	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	12	

3573-73-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. ILSCO OF CANADA LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT LOCATED AT 1050 LAKESHORE ROAD EAST, IN THE TOWN OF MISSISSAUGA, IN THE COUNTY OF PEEL, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (97 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	90
NUMBER OF PERSONS WHO CAST BALLOTS	86
NUMBER OF BALLOTS EXCLUDING SEGREGATED BALLOTS CAST BY PERSONS WHOSE NAMES APPEAR ON VOTERS' LIST	85
NUMBER OF SEGREGATED BALLOTS CAST BY PERSONS WHOSE NAMES APPEAR ON VOTERS' LIST	1

## BALLOT BOX SEALED

3653-73-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. THE REGIONAL MUNICIPALITY OF NIAGARA, HOMES FOR SENIOR CITIZENS (RESPONDENT).

VOTING CONSTITUENCY: "ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT ASSISTANT ADMINISTRATORS, PERSONS ABOVE THE RANK OF ASSISTANT ADMINISTRATOR, SECRETARIES TO THE DIRECTOR, ACCOUNTING SUPERVISOR, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL 1263 AND LOCAL 1287 AND THE REGIONAL MUNICIPALITY OF NIAGARA." (27 EMPLOYEES). (THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT "TECHNICAL EMPLOYEES" INCLUDE "ACTIVITIES CO-ORDINATOR, FIELD WORKERS, CRAFT SUPERVISORS AND RECREATIONAL DIRECTORS".).... (THE BOARD DIRECTS THAT THE BALLOT BOX CONTAINING ALL THE BALLOTS CASE IN THE PRE-HEARING REPRESENTATION VOTE SHALL BE SEALED AND THAT THE BALLOTS SHALL NOT BE COUNTED PENDING THE FURTHER DIRECTION OF THE BOARD.).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	19
NUMBER OF PERSONS WHO CAST BALLOTS	19
BALLOTS SEGREGATED AND NOT COUNTED	1
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	6
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	12

3689-73-R: SERVICE EMPLOYEES UNION, LOCAL 210, AFL-CIO-CLC, WINDSOR, ONTARIO (APPLICANT) v. BLUE WATER REST HOME (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK IN THE EMPLOY OF THE RESPONDENT AT ZURICH, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, REGISTERED NURSES, SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, AND OFFICE STAFF." (15 EMPLOYEES). (THE BOARD FURTHER DIRECTED THAT THE BALLOT BOX CONTAINING ALL THE BALLOTS CAST IN THE PRE-HEARING REPRESENTATION VOTE IN THIS MATTER BE SEALED PENDING THE FURTHER DIRECTION OF THE BOARD.).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	15
NUMBER OF PERSONS WHO CAST BALLOTS	11
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	3
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	8

3766-73-R: BOOT & SHOE WORKER'S UNION, AFFILIATED WITH THE CLC, AFL-CIO  
(APPLICANT) V. ACME RULER Co. LTD. (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT MOUNT FOREST,  
SAVE AND EXCEPT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANKS OF FORE-  
MAN AND FORELADY, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE  
SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN  
24 HOURS PER WEEK." (36 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	27
NUMBER OF PERSONS WHO CAST BALLOTS	27
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	12
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	15

3801-73-R: AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERI-  
CA, A.F.L., C.I.O., C.L.C. (APPLICANT) V. BETTER BEEF LIMITED (CARRYING  
ON BUSINESS AS CANADIAN ABATTOIR) (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT TORONTO, SAVE  
AND EXCEPT FOREMEN, SUPERVISORS, PERSONS ABOVE THE RANKS OF FOREMAN AND  
SUPERVISOR, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT  
MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACA-  
TION PERIOD." (31 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	31
NUMBER OF PERSONS WHO CAST BALLOTS	25
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	9
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	16

3858-73-R: SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 532 (APPLICANT)  
V ST. ELIZABETH HOME SOCIETY (RESPONDENT).

VOTING CONSTITUENCY: "ALL LAY EMPLOYEES OF THE RESPONDENT IN THE CITY OF  
HAMILTON, SAVE AND EXCEPT GRADUATE AND REGISTERED NURSES, PROFESSIONAL  
STAFF, TECHNICAL PERSONNEL, SUPERVISORS, PERSONS ABOVE THE RANK OF SUPER-  
VISOR, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS



PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (50 EMPLOYEES). (FOR PURPOSES OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT TECHNICAL PERSONNEL REFERS TO LABORATORY STAFF AND PHARMACISTS.).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	46
NUMBER OF PERSONS WHO CAST BALLOTS	41
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	15
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	26

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

3547-73-R: TEAMSTERS LOCAL UNION No. 879, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. PETERBOROUGH FREIGHT LINES LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING AT AND OUT OF THE TOWNSHIP OF SALTFLEET, SAVE AND EXCEPT DISPATCHER AND PERSONS ABOVE THE RANK OF DISPATCHER." (5 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	5
NUMBER OF PERSONS WHO CAST BALLOTS	5
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	0
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	5

3617-73-R: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS, LOCAL 419 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. RAPID DATA SYSTEMS & EQUIPMENT LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANTS IN METROPOLITAN TORONTO AND THE MUNICIPALITY OF MISSISSAUGA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE, LABORATORY, SALES AND SERVICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (49 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		33
NUMBER OF PERSONS WHO CAST BALLOTS	32	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	6	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	26	

3661-73-R: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS, LOCAL 419 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. HOFFMAN BROS. LIMITED - DIVISION OF WESTBURNE INDUSTRIAL ENTERPRISES LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (32 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		34
NUMBER OF PERSONS WHO CAST BALLOTS	34	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	15	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	19	

#### APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING JUNE

3528-72-R: OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION LOCAL 343 (APPLICANT) V. TEXTILE WORKERS UNION OF AMERICA, CLC AFL-CIO (RESPONDENT). (2 EMPLOYEES).

3740-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 247 (APPLICANT) V. NORMAND AND FLEMING LIMITED (RESPONDENT). (6 EMPLOYEES).

3779-73-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. LAURENTIAN NURSING HOME (RESPONDENT) V. BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 478 AFFILIATED WITH A.F. OF L., C.I.O., C.L.C. (INTERVENER). (45 EMPLOYEES).

3831-73-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL UNION 1669 (APPLICANT) V. DAWSON APARTMENTS LIMITED J. PERLIN, 556 RIVERVIEW DRIVE, THUNDER BAY (PARTNER) R. KEENAN, 181 WHALEN ST. THUNDER BAY (PARTNER) (RESPONDENT). (2 EMPLOYEES).

3842-73-R: MERCHANTS' SPEEDY DELIVERY EMPLOYEES' ASSOCIATION (APPLICANT) V. MERCHANTS' SPEEDY DELIVERY LTD. (RESPONDENT) V. CHRISTIAN LABOUR ASSOCIATION OF CANADA (INTERVENER #1) V. TEAMSTERS, CHAUFFEURS, WAREHOUSE-

MEN AND HELPERS LOCAL 880 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (INTERVENER #2). (7 EMPLOYEES).

3843-73-R: WATERLOO REGIONAL SCHOOL BUS DRIVERS ASSOCIATION (APPLICANT) V. LISHMAN SCHOOL LINES WATERLOO WELLINGTON LIMITED (RESPONDENT). (87 EMPLOYEES).

3925-73-R: INTERNATIONAL UNION UNITED PLANT GUARD WORKERS OF AMERICA LOCAL 1962 (APPLICANT) V. HUMBER COLLEGE OF APPLIED ARTS AND TECHNOLOGY (RESPONDENT). (8 EMPLOYEES).

3928-73-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. HAR-KAL CONSTRUCTION (RESPONDENT). (2 EMPLOYEES).

3942-73-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 141 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. PERTH CONCRETE PRODUCTS LTD. (RESPONDENT). (18 EMPLOYEES).

3950-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (APPLICANT) V. DUNKER CONSTRUCTION LIMITED (RESPONDENT). (17 EMPLOYEES).

3955-73-R: INTERNATIONAL PRINTING PRESSMEN AND ASSISTANTS UNION (I.P.P. & A.U.) OF NORTH AMERICA (APPLICANT) V. TORONTO STAR LTD. (RESPONDENT). (150 EMPLOYEES).

3993-73-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. MARCO CONSTRUCTION WALKERTON INCORPORATED (RESPONDENT). (2 EMPLOYEES).

3998-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) V. M & U MASONRY COMPANY (RESPONDENT). (15 EMPLOYEES).

#### APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED OF

##### DURING JUNE

3660-73-R: MR. DAVID WRIGHT (APPLICANT) V. CANADIAN UNION OF OPERATING ENGINEERS (RESPONDENT) V. FRANKEL STRUCTURAL STEEL LIMITED (INTERVENER). (1 EMPLOYEE). (GRANTED).

3865-73-R: HOWDEN PARSONS LIMITED (APPLICANT) V. THE METHODS, WAGE RATE AND SENIOR COST TECHNICIANS' ASSOCIATION OF ONTARIO, LOCAL 166, AMERICAN FEDERATION OF TECHNICAL ENGINEERS, A.F.L.-C.I.O.-C.L.C. (RESPONDENT). (10 EMPLOYEES). (GRANTED).

3875-73-R: LUCIANO TRINAISTICH PAUL W. STANLAKE (APPLICANTS) V. C.U.P.E. LOCAL 1484 C.L.C. (RESPONDENT) V. TISDALE-WHITNEY AMBULANCE SERVICE (INTERVENER). (2 EMPLOYEES). (DISMISSED).



APPLICATIONS FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF DURINGJUNE

3109-72-R: GENERAL TRUCK DRIVERS' UNION, LOCAL 938 AFFILIATED WITH TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. CANADIAN TANK LINES UNION (RESPONDENT) V. MUNICIPAL TANK LINES LIMITED (EMPLOYER) V. GROUP OF EMPLOYEES (OBJECTORS). (DISMISSED).

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3227-72-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. CANADIAN INDUSTRIES LIMITED (INGERSOLL WORKS) (RESPONDENT) V. INTERNATIONAL UNION OF DISTRICT 50, ALLIED & TECHNICAL WORKERS OF THE UNITED STATES AND CANADA (PREDECESSOR TRADE UNION). (GRANTED).

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3250-72-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. CANADIAN VINYL FABRICS, STAUFFER CHEMICAL COMPANY OF CANADA, LTD. (RESPONDENT). (GRANTED).

3251-72-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. CANADIAN VINYL FABRICS, STAUFFER CHEMICAL COMPANY OF CANADA, LTD. (RESPONDENT). (GRANTED).

3259-72-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. STEIN-HALL, LIMITED (RESPONDENT) V. INTERNATIONAL UNION OF DISTRICT 50, ALLIED & TECHNICAL WORKERS OF THE UNITED STATES AND CANADA (PREDECESSOR TRADE UNION). (GRANTED).

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURINGJUNE

1624-71-U: NORTH SIMCOE ELECTRICAL CONTRACTING LIMITED (APPLICANT) V. THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL 894, AND DOUGLAS SHEARER, WILLIAM CLARKSON, THOMAS SHAUGHNESSY, DAVID BROWN, HARLAND KELLY, AND GRENVILLE MENZIES (RESPONDENTS). (DISMISSED).

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3037-72-U: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. THE METROPOLITAN TORONTO APARTMENT BUILDERS' ASSOCIATION (RESPONDENT). (WITHDRAWN).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING JUNE

3133-72-U: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) V. SINCLAIR & VALENTINE COMPANY OF CANADA LIMITED WALTER L. KITCHEN, RUSSELL EGERDIE, GEORGE ASHBY (RESPONDENTS). (WITHDRAWN).

3352-72-U: PETERBOROUGH FREIGHT LINES LIMITED (APPLICANT) v. VINCE MAC-PHERSON AND JAMES WILDE (RESPONDENTS). (WITHDRAWN).

3433-72-U: NATIONAL STEEL CAR CORPORATION LIMITED (APPLICANT) v. W. G. GROVER, J. RUTTEN, AND ALL OTHER RESPONDENTS NAMED IN SCHEDULE "A" ATTACHED HERETO (RESPONDENTS). (WITHDRAWN).

3652-73-U: HOTEL, MOTEL, AND RESTAURANT EMPLOYEES AND BEVERAGE DISPENSERS' UNION, LOCAL 757, THUNDER BAY, OF THE HOTEL AND RESTAURANT EMPLOYEES' AND BARTENDERS' INTERNATIONAL UNION, A.F.L. - C.I.O. (APPLICANT) v. MR. ROBERT ARTHUR, NEW ONTARIO HOTEL, 219 ARTHUR STREET, THUNDER BAY "P", ONT. (RESPONDENT). (WITHDRAWN).

3808-73-U: HUTCHISON MECHANICAL INSTALLATIONS LTD. (APPLICANT) v. BRUNO TONEGUZZO, HERBERT WELLHAUSER AND MELVIN BRIGHT (RESPONDENTS). (WITHDRAWN).

3951-73-U: SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL UNION 285 (APPLICANT) v. WESTON SHEET METAL COMPANY, HORST LUNG, HORST TYDMERS AND ADAM GRAHAM (RESPONDENTS). (WITHDRAWN).

#### APPLICATION FOR CONSENT TO PROSECUTE (HOSPITAL ARBITRATION ACT) DISPOSED

##### OF DURING JUNE

48-72-PH: CANADIAN UNION OF GENERAL EMPLOYEES (APPLICANT) v. TORONTO WESTERN HOSPITAL, ROY H. BULGIN, BOYD MCAULAY, A. BRUCE MATTHEWS, TREVOR F. MOORE, GRANT HORSEY, A. C. RYLEY, HENRY N. R. JACKMAN, J. E. BRENT, W. C. THORNTON CRAN, JOHN D. MINGAY, W. F. MCLEAN, ALAN R. MARCHMENT, FRANCIS D. LACE, FRASER M. FELL, JOHN F. ELLIS, NELSON M. DAVIS, GEORGE M. BLACK, JR, WILLIAM E. COUTTS, D. G. WALDON, J.A. RHIND, HENRY N. BAWDEN, ARTHUR, EGGLETON, ALDERMAN, WILLIAM ARCHER, ALDERMAN, DR. LOUIS R. HARNICK, DR. J. MICHAEL CAMPBELL, DR. EVAN MONKMAN (RESPONDENTS). (GRANTED).

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#### COMPLAINTS UNDER SECTION 79 (UNFAIR LABOUR PRACTICE) DISPOSED OF DURING

##### JUNE

2612-72-U: UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL CIO CLC (COMPLAINANT) v. CANADIAN URETHANE SOLES LIMITED (RESPONDENT). (WITHDRAWN).

2725-72-U: JOHN SYMMERS (COMPLAINANT) v. LOCAL 598 OF THE OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA (RESPONDENT) v. HEFFERNAN FLOOR & WALL PRODUCTS LIMITED (INTERVENER). (WITHDRAWN).

3285-72-U: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (COMPLAINANT) V. RICCI-GRAHAM INDUSTRIES LIMITED (RESPONDENT). (DISMISSED).

3319-72-U: PETER COSTEY (COMPLAINANT) V. ONTARIO HYDRO (RESPONDENT). (DISMISSED).

3404-72-U: WITOLD KORSAK (COMPLAINANT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793, AND JOHN REDSHAW, UNION REPRESENTATIVE (RESPONDENTS). (DISMISSED).

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3438-72-U: BRYAN J. LUNT (COMPLAINANT) V. MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES LOCAL 647, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (RESPONDENT). (DISMISSED).

3506-72-U: GUSTAV WENDZICH (COMPLAINANT) V. RETAIL CLERKS UNION, LOCAL 486, CHARTERED BY THE RETAIL CLERKS INTERNATIONAL ASSOCIATION (RESPONDENT) V. STEINBERG'S LIMITED (INTERVENER). (DISMISSED).

3508-72-U: TEXTILE WORKERS UNION OF AMERICA, CLC, AFL-CIO (COMPLAINANT) V. BURLINGTON CARPET MILLS CANADA LTD. (RESPONDENT). (DISMISSED).

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3516-72-U: GUSTAV WENDZICH (COMPLAINANT) V. STEINBERG'S LIMITED (RESPONDENT) V. RETAIL CLERKS UNION, LOCAL NO. 486 (INTERVENER). (DISMISSED).

3544-73-U: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837 (COMPLAINANT) V. HOPE-LOCH CONSTRUCTION LTD. (RESPONDENT). (WITHDRAWN).

3576-73-U: CANADIAN UNION OF OPERATING ENGINEERS, LOCAL 101 (COMPLAINANT) V. OLYMPIA AND YORK DEVELOPMENTS LIMITED (RESPONDENT). (WITHDRAWN).

3633-73-U: OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION (COMPLAINANT) V. FABERGE OF CANADA LIMITED (RESPONDENT). (WITHDRAWN).

3648-73-U: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (COMPLAINANT) V. C E B LIMITED (RESPONDENT). (WITHDRAWN).

3670-73-U: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS, LOCAL 419 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (COMPLAINANT) V. HOFFMAN BROS. LIMITED - DIVISION OF WESTBURNE INDUSTRIAL ENTERPRISES LIMITED (RESPONDENT). (WITHDRAWN).

3797-73-U: CHARLES PATRICK WHALING (COMPLAINANT) V. INTERNATIONAL HARVESTER CO. OF CAN. (RESPONDENT). (WITHDRAWN).

3874-73-U: SHEET METAL WORKERS INTERNATIONAL ASSOCIATION LOCAL UNION #285 (COMPLAINANT) V. WESTON SHEET METAL COMPANY (RESPONDENT). (WITHDRAWN).



3913-73-U: WM. M. SURGENT PRESIDENT OF LOCAL 1684 GLASS WORKERS UNION (COMPLAINANT) V. GLASS DIVISION OF WINDSOR CONSTRUCTION ASSOCIATION (RESPONDENT). (WITHDRAWN).

APPLICATION UNDER SECTION 39 DISPOSED OF DURING JUNE

3687-73-M: JOHN FAASSE (APPLICANT) V. AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC, LOCAL UNION 175 (RESPONDENT TRADE UNION) V. THE GREAT ATLANTIC AND PACIFIC COMPANY OF CANADA LIMITED (RESPONDENT EMPLOYER). (GRANTED).

APPLICATIONS UNDER SECTION 55 DISPOSED OF DURING JUNE

3226-72-R: THE KITCHENER CITY HALL OFFICE AND CLERICAL STAFF, LOCAL 791, CHARTERED BY THE CANADIAN UNION OF PUBLIC EMPLOYEES AND AFFILIATED WITH THE CANADIAN LABOUR CONGRESS (APPLICANT) V. THE REGIONAL MUNICIPALITY OF WATERLOO (RESPONDENT). (GRANTED).

UNIT: "ALL CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, ONE SECRETARY TO EACH OF THE FOLLOWING: COMMISSIONER OF PLANNING AND DEVELOPMENT, CHIEF ADMINISTRATOR, CHAIRMAN, CLERK, SOLICITOR, COMMISSIONER OF SOCIAL SERVICES, COMMISSIONER OF ENGINEERING AND COMMISSIONER OF FINANCE, STUDENTS EMPLOYED DURING THE SUMMER VACATION PERIOD, ROTARY ENGINEERING STUDENTS EMPLOYED DURING THEIR WORK TERM, PERSONS EMPLOYED BY THE LIBRARY BOARD AND THOSE PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK."

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		92
NUMBER OF PERSONS WHO CAST BALLOTS	82	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	30	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	52	

3644-73-R: MAN OF ARAN LTD. (APPLICANT) V. LOCAL 280 OF THE INTERNATIONAL BEVERAGE DISPENSERS' & BARTENDERS' UNION OF THE HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS' INTERNATIONAL UNION, A.F. OF L., C.I.O., C.L.C. (RESPONDENT). (GRANTED).

APPLICATION FOR DETERMINATION UNDER SECTION 95(2) DISPOSED OF DURINGJUNE

1996-72-M: CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL 1 (APPLICANT) V. TORONTO HYDRO (RESPONDENT). (WITHDRAWN).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

1246-71-R: ONTARIO PRECAST CONCRETE MANUFACTURERS' ASSOCIATION, ERECTORS DIVISION (APPLICANT) V. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 AND LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, ONTARIO PROVINCIAL COUNCIL (RESPONDENTS) V. ELECTRICAL POWER SYSTEMS CONSTRUCTION ASSOCIATION (INTERVENER #1). (REQUEST DENIED).

[1973] 2 OLRB M.R. - PAGE 321.

3541-72-R: ASSOCIATION OF COMMERCIAL AND TECHNICAL EMPLOYEES LOCAL 1701 (APPLICANT) V. CANADIAN UNDERWRITERS' ASSOCIATION (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (REQUEST DENIED).

[1973] 2 OLRB M.R. - PAGE 353.

3589-73-R: CSAO NATIONAL (INC.) (APPLICANT) V. ST. JOSEPH HOSPITAL OF SUDBURY (RESPONDENT). (REQUEST DENIED).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - SECTION 79

3319-72-U: PETER COSTEY (COMPLAINANT) V. ONTARIO HYDRO (RESPONDENT). (REQUEST DENIED).

STATISTICAL TABLES FOR FIRST QUARTER OF FISCAL YEAR 1973-74

TABLE I

APPLICATIONS AND COMPLAINTS FILED WITH THE ONTARIO LABOUR RELATIONS BOARD

		<u>NUMBER FILED</u>	
		<u>1ST. QUARTER</u>	
		<u>APRIL 2, TO JUNE 29,</u>	<u>1973-74</u>
		<u>1972-73</u>	
I.	CERTIFICATION	377	271
II.	DECLARATION TERMINATING BARGAINING RIGHTS	13	10
III.	DECLARATION OF SUCCESSOR STATUS	7	9
IV.	DECLARATION THAT STRIKE UNLAWFUL	6	12
V.	DECLARATION THAT LOCK-OUT UNLAWFUL	1	1
VI.	CONSENT TO PROSECUTE	15	29
VII.	COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 79)	63	44
VIII.	MISCELLANEOUS	<u>20</u>	<u>30</u>
	TOTAL	502	406
		==	==

TABLE II

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

		<u>NUMBER FILED</u>	
		<u>1ST. QUARTER</u>	
		<u>APRIL 2, TO JUNE 29,</u>	<u>1973-74</u>
		<u>1972-73</u>	
HEARINGS AND CONTINUATION OF HEARINGS BY THE BOARD		357	282



TABLE III

APPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS  
BOARD BY MAJOR TYPES

		<u>NUMBER DISPOSED OF</u>	
		<u>1ST. QUARTER</u>	
		<u>APRIL 2, TO JUNE 29,</u>	<u>1973-74</u>
		<u>1972-73</u>	
I.	CERTIFICATION	358	248
II.	DECLARATION TERMINATING BARGAINING RIGHTS	9	9
III.	DECLARATION OF SUCCESSOR STATUS	9	1
IV.	DECLARATION THAT STRIKE UNLAWFUL	7	9
V.	DECLARATION THAT LOCK-OUT UNLAWFUL	2	-
VI.	CONSENT TO PROSECUTE	26	31
VII.	COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 79)	66	68
VIII.	MISCELLANEOUS	<u>12</u>	<u>46</u>
TOTAL		489	412
		<u><u>        </u></u>	<u><u>        </u></u>

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD BY TYPE  
AND DISPOSITION

	<u>NUMBER OF APPLICATIONS</u>		<u>NUMBER OF EMPLOYEES*</u>	
	<u>1ST. QUARTER</u>		<u>1ST. QUARTER</u>	
	<u>APRIL 2, TO JUNE 29,</u>	<u>APRIL 2, TO JUNE 29,</u>	<u>APRIL 2, TO JUNE 29,</u>	<u>APRIL 2, TO JUNE 29,</u>
	<u>1973-74</u>	<u>1972-73</u>	<u>1973-74</u>	<u>1972-73</u>
<b>I. <u>CERTIFICATION</u></b>				
GRANTED	246	165	7113	4816
DISMISSED	76	59	2796	3472
WITHDRAWN	<u>36</u>	<u>24</u>	<u>817</u>	<u>649</u>
TOTAL	358	248	10726	8937
	<u>==</u>	<u>==</u>	<u>==</u>	<u>==</u>
<b>II. <u>TERMINATION</u> <u>OF BARGAINING</u> <u>RIGHTS</u></b>				
GRANTED	4	6	81	145
DISMISSED	5	2	341	18
WITHDRAWN	<u>=</u>	<u>1</u>	<u>-</u>	<u>-</u>
TOTAL	9	9	422	163
	<u>=</u>	<u>=</u>	<u>==</u>	<u>==</u>

\*THESE FIGURES REFER TO THE NUMBER OF EMPLOYEES DIRECTLY AFFECTED AND ARE BASED ON THE NUMBER OF EMPLOYEES IN THE BARGAINING UNITS AT THE TIME THE APPLICATIONS FOR CERTIFICATION WERE FILED WITH THE BOARD. TOTALS FOR APPLICATIONS DISMISSED AND WITHDRAWN ARE APPROXIMATE.

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD  
BY TYPE AND DISPOSITION (CONTINUED)

		<u>NUMBER OF APPLICATIONS</u>	
		<u>1ST. QUARTER</u>	
		<u>APRIL 2, TO JUNE 29,</u>	
		<u>1973-74</u>	<u>1972-73</u>
III.	<u>DECLARATION THAT STRIKE</u> <u>UNLAWFUL</u>		
	GRANTED	-	2
	DISMISSED	1	3
	WITHDRAWN	<u>6</u>	<u>4</u>
	TOTAL	7	9
		=	=
IV.	<u>DECLARATION THAT LOCK-OUT</u> <u>UNLAWFUL</u>		
	GRANTED	-	-
	DISMISSED	2	-
	WITHDRAWN	<u>-</u>	<u>-</u>
	TOTAL	2	-
		=	=
V.	<u>CONSENT TO PROSECUTE</u>		
	GRANTED	6	7
	DISMISSED	6	2
	WITHDRAWN	<u>14</u>	<u>22</u>
	TOTAL	26	31
		=	=
VI.	<u>COMPLAINT OF UNFAIR</u> <u>PRACTICE IN EMPLOYMENT</u> <u>(SECTION 79)</u>		
	GRANTED	3	4
	DISMISSED	23	26
	WITHDRAWN	<u>40</u>	<u>38</u>
	TOTAL	66	68
		=	=



TABLE V

REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED OF  
BY THE ONTARIO LABOUR RELATIONS BOARD

	<u>NUMBER OF VOTES</u>	
	<u>1ST. QUARTER</u>	
	<u>APRIL 2, TO JUNE 29,</u>	<u>1973-74</u>
		<u>1972-73</u>
<u>CERTIFICATION AFTER VOTE*</u>		
PRE-HEARING VOTE	30	11
POST-HEARING VOTE	20	14
BALLOTS NOT COUNTED	-	-
<u>DISMISSED AFTER VOTE</u>		
PRE-HEARING VOTE	14	11
POST-HEARING VOTE	8	15
BALLOTS NOT COUNTED	<u>1</u>	<u>1</u>
TOTAL	<u>73</u>	<u>52</u>

\*INCLUDES APPLICANT-INTERVENER APPLICATION IN WHICH BOTH APPLICANT AND INTERVENER APPLY FOR A NEW UNIT AND EITHER APPLICANT OR INTERVENER IS CERTIFIED.

TABLE VI

REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF BY  
THE ONTARIO LABOUR RELATIONS BOARD

	<u>NUMBER OF VOTES</u>	
	<u>1ST. QUARTER</u>	
	<u>APRIL 2, TO JUNE 29,</u>	<u>1973-74</u>
		<u>1972-73</u>
*RESPONDENT UNION SUCCESSFUL	2	-
RESPONDENT UNION UNSUCCESSFUL	<u>1</u>	<u>3</u>
TOTAL	<u>3</u>	<u>3</u>

\*IN TERMINATION PROCEEDINGS WHERE A VOTE IS TAKEN THE APPLICANT IS A GROUP OF EMPLOYEES OR THE EMPLOYER; THE INCUMBENT UNION IS THUS THE RESPONDENT.















**BINDING SECT. OCT 14 1980**





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